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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

JOHNATHON IRISH

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1:19-cr-251-LM-1
February 10, 2020
8:45 a.m.

TRANSCRIPT OF JURY TRIAL
DAY TWO - MORNING SESSION
BEFORE THE HONORABLE LANDYA B. McCAFFERTY

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1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for
3 consideration today jury trial -- oh, the defendant's
4 not here.

5 I apologize, your Honor. Let me get Mr. Irish
6 here. Let me just finish announcing the case.

7 Jury trial in case number 19-cr-251-LM, United
8 States vs. Johnathon Irish.

9 THE COURT: Can you hand them the latest and
10 greatest jury instructions?

11 (Jury instructions handed to counsel.)

12 THE COURT: Since we only have ten minutes
13 before the start of trial, I just want to talk to
14 counsel. There is a juror, juror number two, who
15 informed Attorney Esposito this morning that her
16 father-in-law, I believe, had a stroke this weekend.

17 And she's here today, I think she's prepared
18 to sit today, but if she were to get a call of some sort
19 that his situation is rapidly deteriorating, she just
20 wanted us to be aware of that.

21 (Defendant entered the courtroom.)

22 THE COURT: So let me make sure Mr. Irish
23 knows.

24 We were just discussing one issue as you were
25 coming up, sir, and that is that a juror in the case,

1 juror number two, her father-in-law had a stroke this
2 weekend. And she's here today and prepared, I believe,
3 to hear evidence, but I wanted to check in with counsel
4 and see if there's anything you want me to do before the
5 trial starts with respect to that.

6 MR. FALKNER: Your Honor, given that we do
7 have two alternates and given that the -- I can only
8 imagine the overwhelming concern the juror would have.
9 I would suggest either that she be excused or at least
10 that we have some kind of voir dire with her to ensure
11 that she doesn't --

12 THE COURT: Okay. Let me hear from the
13 government.

14 MS. KRASINSKI: I agree. I imagine she's
15 going to be very preoccupied. I would ask that the
16 Court excuse her.

17 THE COURT: Okay. So both are asking for her
18 excusal. You're not asking for any sort of voir dire to
19 confirm --

20 MS. KRASINSKI: No, your Honor.

21 THE COURT: -- anything.

22 Okay. Well, let's do this. Rather than bring
23 her here, which -- why don't we do it in the smaller
24 room and we'll simply bring her in and explain to her
25 that all parties are in agreement that she should be

1 excused and not have to -- and go take care of her
2 father-in-law. That's everybody's preference?

3 MR. FALKNER: I was going to just make clear
4 on the record that if it wasn't clear that my preference
5 would be to just excuse her and only as an alternative
6 that she be voir dired. So that's fine.

7 THE COURT: Okay. All right. Let's do that
8 before the trial starts, Attorney Esposito.

9 So let's go through a few issues before we
10 begin. And I know you have something you wanted to
11 bring to my attention.

12 Let me see. I know the unanimity issue is an
13 issue that we need to deal with and I can tell you both
14 that I have studied the issue somewhat and I want to
15 make sure you both have read -- and particularly the
16 government has read -- the two cases that certainly lay
17 out some concerns with respect to unanimity in a case
18 where the guns are not clearly in one location.

19 I think the language is one place at one time.
20 It's the case of *U.S. v. Widi*, W-i-d-i, 684 F.3d. It's
21 a First Circuit case. And I'll just read from it, just
22 to give you the highlights before we begin.

23 In dicta, the First Circuit said, quote: But
24 imagine that while the indictment easily passed the
25 Verrecchia test, which is the time and place test, trial

1 evidence showed that the weapons were so located that a
2 juror might reasonably believe quite different things
3 about the defendant's knowing possession of different
4 guns.

5 So that was *Widi*.

6 And then *Leahy* is another case where the
7 First Circuit cautions that this in one place at one
8 time rule should not be applied mechanically without
9 regard to the facts developed at trial.

10 Those two cases certainly raise an issue. It
11 obviously depends on how the evidence comes in and we'll
12 have to deal with that. I just wanted to make sure the
13 government was aware of -- of those cautions.

14 And the Court in *Leahy* did a plain error
15 review, but indicated if the objection had been
16 preserved that: "We would be forced to delve into the
17 geography of the relevant unit of prosecution and
18 determine whether the pistol taken from a kitchen drawer
19 one evening and the rifle stowed in the pantry, but
20 perhaps handled at some indeterminate point, were
21 sufficiently related in time and place."

22 Okay. You may be familiar with those two
23 cases. I just wanted to make sure that we were all
24 grappling with this issue as the evidence comes in.

25 All right. And clearly you've removed the

1 complex issue of how we deal with the one gun that had
2 some problematic connections to interstate commerce.
3 That gun has been removed.

4 So -- so unanimity we'll place to the side for
5 a moment unless you want to talk about that now.

6 With respect to immunity, what I -- I've
7 included, I've added to our draft jury instructions,
8 I've add immunity, the pattern instruction, making it
9 slightly more readable, but basically it's the pattern.

10 When the witness testifies, I don't -- I
11 haven't contemplated giving an instruction at that time,
12 but if the parties would like me to do that, you need to
13 let me know that.

14 Is that something you want at the time or
15 just -- I've got it in the jury instructions to read to
16 the jury as they assess witness testimony.

17 MS. KRASINSKI: I think it's appropriate when
18 the Court instructs the jury along with all of the
19 instructions, your Honor.

20 THE COURT: Same?

21 MR. FALKNER: I think that's okay, your Honor.

22 THE COURT: Okay.

23 MR. FALKNER: And just so your Honor's aware,
24 and I -- and I did discuss it with the government --
25 there's a model instruction that's a little more

1 detailed than what your Honor has submitted in these
2 proposed instructions and it includes three different
3 categories and I expect all of these categories to come
4 in this case, which is provided evidence under
5 agreements with the government, received money from the
6 government in exchange for providing information, and
7 testified under a grant of immunity.

8 So we have made some handwritten markings to
9 it and I think both sides agreed to it. And if --

10 THE COURT: Okay. Could you -- could you just
11 give that to my law clerk? And you both agreed to that,
12 so if we make those changes --

13 MS. KRASINSKI: Yes.

14 THE COURT: -- you're agreeable? Okay. Thank
15 you.

16 All right. What was the issue you wanted to
17 bring to my attention?

18 MS. KRASINSKI: There are a few issues, your
19 Honor.

20 The first is the government this morning
21 included a new exhibit to its exhibit list.

22 On this past Saturday evening, on the 8th, in
23 a recorded jail communication, the defendant made
24 admissions relating to this case.

25 In about -- it was about an hour-long call.

1 We received the call or the communication yesterday. We
2 disclosed it to counsel, identifying the 30-second
3 portion that includes the defendant's admissions.

4 If your Honor would like to hear it, we can
5 certainly play that clip for your Honor now, and
6 disclosed it to counsel and told him that we intended to
7 include it as an exhibit and he objects to its admission
8 and so we wanted to raise that issue with the Court.

9 THE COURT: Okay.

10 Go ahead, Attorney Falkner. What's your
11 objection?

12 MR. FALKNER: Your Honor, my objection is
13 under Rule 403. Basically, it's a 30-second clip and
14 I'll do my best to summarize it, although you'll be able
15 to listen to it.

16 The defendant is meeting with his mother and
17 another individual. He says -- he complains to his
18 mother that she had sent text messages to --

19 THE COURT: Can I just get -- I thought this
20 was a jail call. It's not a call?

21 MS. KRASINSKI: So the -- it's a jail visit,
22 but the visit is by phone and it is recorded like any
23 jail call.

24 THE COURT: Okay. All right. Go ahead.

25 MR. FALKNER: And so --

1 THE COURT: It's his mom and one other
2 individual with her?

3 MR. FALKNER: Correct.

4 THE COURT: Talking on the phone with
5 Mr. Irish.

6 MR. FALKNER: Correct.

7 THE COURT: Okay.

8 MR. FALKNER: And he complains to his mother
9 that she sent text messages to Mr. Roy. Those text
10 messages are exhibits that the government intends to
11 introduce at trial. He comments that her messages to
12 Mr. Roy make it appear as if he is in a conspiracy with
13 his mother to hide the firearms.

14 In response, she says something along the
15 lines that, well, it was your idea to send the text
16 messages. And he responds, no, I told you not to send
17 messages; I told you to make phone calls.

18 So the issue is -- certainly there's some
19 probative evidence in the idea that he directed her to
20 make phone calls. That is of somewhat low probative
21 value, I would suggest, because of the fact that it's
22 clear that there's a number of phone calls and text
23 messages that they're all involved in.

24 So it's certainly clear that -- from the
25 evidence that Mr. Irish and his mother are in

1 communication at the time. And the government, I
2 believe, will be entering a lot of consciousness of
3 guilt evidence.

4 As to the comment that it appears that they're
5 in a conspiracy together, that's essentially a
6 commenting on the evidence. He's not admitting that
7 they are. He's commenting on that evidence in a way
8 that an attorney might do in a closing argument,
9 although I think it may not even be proper argument.

10 So basically the government is getting
11 argument, closing argument, out of the defendant in the
12 form of an exhibit and I'd suggest that it's unfairly
13 prejudicial because he really isn't saying there was a
14 conspiracy; he's saying that these -- this evidence that
15 is in evidence -- or is very likely to be in evidence
16 creates a certain appearance and that's really the
17 jury's decision as to what appearance that creates.

18 THE COURT: Okay. Can you play the clip?

19 MS. KRASINSKI: Oh, yes.

20 THE COURT: I'm sorry, go ahead. I didn't
21 mean to cut you off.

22 MS. KRASINSKI: No, that's --

23 THE COURT: Okay.

24 (Audio recording played.)

25 MS. KRASINSKI: Your Honor, I don't know if

1 you've had a chance to review Government's Exhibit 29D.
2 If not, I can certainly provide you with a copy.

3 There's going to be some evidence that these
4 guns were in his physical custody, physical possession,
5 but there's also going to be evidence that essentially
6 they were playing hot potato with these guns. He gave
7 them to Neil, Neil gave them to this guy Gary. And to
8 prove constructive possession, we have to show that he
9 exercised the authority, dominion, or control over the
10 gun.

11 Government's Exhibit 29D, there's going to be
12 testimony that the defendant's mother texted the person
13 who ultimately had possession of the guns: Please text
14 him to set up times to receive those items, I'll send a
15 picture of receipt.

16 There are additional questions and text
17 messages from her that include sending the -- this
18 gentleman Gary and also this other gentleman, Roscoe
19 Whitney, an essentially falsified transfer of weapon
20 document, and there are text messages from the
21 defendant's mother that say J is waiting. J wants these
22 documents. And that's all in Government's Exhibit 29D.

23 THE COURT: Who is J?

24 MS. KRASINSKI: Johnathon.

25 THE COURT: Oh, okay.

1 MS. KRASINSKI: But this is the defendant
2 himself admitting that he's the one who directed his
3 mother to engage in all of this. This is direct
4 evidence that he was in constructive possession of these
5 firearms, that he was exercising the power and intention
6 to control these firearms, and so its probative value is
7 high here.

8 It's the only statement of the defendant
9 that -- that shows that he is the one who was directing
10 his mother to do all of these things on his behalf, to
11 move the guns from one place to another, to -- to
12 essentially cover up the true path of the guns.

13 So its probative value here is very, very high
14 and they're the defendant's words. They don't create an
15 unfair prejudice. They're certainly prejudicial, but
16 not so unfairly prejudicial that they outweigh the
17 probative value here.

18 THE COURT: All right. These are admissible
19 statements of the defendant and you can argue what
20 weight they should be given when you make your arguments
21 to the jury, but I do not find that the prejudice --
22 that the probative value is substantially outweighed by
23 the prejudice. They're highly -- highly probative and
24 ultimately I think that you can argue the issue and how
25 the jury should interpret those statements, but those

1 are -- those are relevant.

2 So what -- any other issues?

3 MS. KRASINSKI: One other issue. In the
4 context of this call -- it's not something we're going
5 to play to the jury, but I do want to raise it here.

6 The defendant seems to believe that one of the
7 witnesses, ATF Special Agent Forte, is on the Laurie
8 list. I have discussed this with counsel before. He
9 has never been a state employee and he has never
10 testified in state court. He's not on the Laurie list.
11 We checked.

12 In addition, I have gone and done a Giglio
13 check with ATF and was told that there is nothing
14 responsive.

15 And so I raised that issue with counsel to
16 say, look, we know he's not on the Laurie list, we know
17 he doesn't have any adverse credibility determinations,
18 do you intend to impeach him with the defendant's belief
19 that he is on the Laurie list and was told to raise it
20 with the Court.

21 So I would ask that he not be permitted to
22 impeach Special Agent Forte about whether or not there
23 have been adverse credibility findings.

24 MR. FALKNER: Your Honor, if the government is
25 representing on the record that there have been no such

1 findings, I don't know that there's anything more that
2 can be done.

3 THE COURT: All right. Then you will not be
4 inquiring or impeaching -- you don't have a good faith
5 basis to do so.

6 MR. FALKNER: Correct. I only --

7 THE COURT: Okay.

8 MR. FALKNER: I only have -- I only have that
9 the defendant has a belief that that may be so. And in
10 the face of the government putting on the record that
11 that's not so, I think that that satisfies me.

12 THE COURT: All right. So when the jury comes
13 back out, I'll give them just some brief preliminary
14 instructions.

15 And who is going to be doing the opening for
16 the government?

17 MS. WEILAND: Your Honor, I'll be opening on
18 behalf of the government.

19 THE COURT: Excellent. All right.

20 MR. FALKNER: Your Honor, I don't believe
21 there's been an order of sequestration of the witnesses,
22 but I'd just ask that that be done at this time.

23 THE COURT: All right. And you don't have any
24 objection to sequestration?

25 MS. KRASINSKI: No, your Honor. The

1 government just asks that its case agent be authorized
2 to sit at counsel table.

3 THE COURT: All right. And you don't have any
4 objection to the case agent?

5 MR. FALKNER: My only concern is that he did
6 interview some of the witnesses and may be theoretically
7 testifying to prior inconsistent statements if those
8 witnesses were to deny the statements that they made to
9 that agent, but --

10 THE COURT: But other than that, you don't
11 have any objection to him sitting?

12 MR. FALKNER: Only -- only -- my only concern,
13 like I said, is that when those particular witnesses are
14 testifying, I'm not sure that -- that he should be in
15 the courtroom, but ...

16 THE COURT: Okay. Well, when those witnesses
17 testify, come to sidebar and we'll deal with that issue.

18 Do you have any concerns about that?

19 MS. KRASINSKI: No, your Honor. I mean, Rule
20 615 generally authorizes the case agent to be --

21 THE COURT: Right.

22 MS. KRASINSKI: -- in the courtroom.

23 THE COURT: Okay. Well, if there are any
24 significant evidentiary issues or concerns, you could
25 bring them up at sidebar. I can rule on those.

1 MR. FALKNER: I --

2 THE COURT: I would think that would often be
3 the case with a case agent at the table, that if there
4 is impeachment, obviously part of that would be you
5 questioning him about what he's heard and he's been
6 sitting here the whole time and that kind of thing. But
7 I'm not sure that I have a basis to sequester --

8 MR. FALKNER: I understand.

9 THE COURT: -- when the rule permits it.
10 Okay.

11 MR. FALKNER: I'm asking for him to be
12 sequestered on that basis. I don't think -- you know,
13 as those witnesses come up, I have no way to know ahead
14 of time who is going to need to be --

15 THE COURT: Right.

16 MR. FALKNER: -- impeached and who's not. I
17 mean, every one of them could testify consistently with
18 their reports.

19 So if your Honor is making a decision now, if
20 I can reserve my rights on it unless your Honor wishes
21 me to come to the sidebar at the beginning of each such
22 witness.

23 THE COURT: Let's do that. Why don't you come
24 to sidebar. All right?

25 MR. FALKNER: (Nods head.)

1 THE COURT: All right. Okay.

2 So we are going to talk with our juror. So
3 I'm going to go in the back room and then if counsel
4 could join me.

5 And, Mr. Irish, we're going to just
6 essentially let her leave the trial. So we will --
7 obviously we have two alternates. And I saw you shaking
8 your head in agreement with that approach, so I know you
9 agree as well.

10 So we're just going to go handle that in a way
11 that's not quite as intimidating as being in front of
12 everybody in the courtroom, but we will have a record.
13 All right?

14 THE CLERK: All rise.

15 (In chambers.)

16 THE COURT: Hello.

17 THE JUROR: Hello.

18 THE COURT: We didn't want to do this with you
19 out there because we heard, all of us heard, what
20 happened over the weekend. And we wanted to just give
21 you the option.

22 Everybody was unanimous to let you go today.

23 THE JUROR: Okay.

24 THE COURT: So you can be with your
25 father-in-law. Is that your much preferred approach?

1 THE JUROR: You know, it's just the feeling
2 the not being available --

3 THE COURT: Yeah.

4 THE JUROR: -- is what's hard. Like I said, I
5 have the logistics worked out, I just don't know what's
6 coming. So --

7 THE COURT: We think you might be
8 understandably totally distracted.

9 THE JUROR: Possibly.

10 THE COURT: So I think everybody's inclination
11 was just to bring you in, tell you how sorry we are,
12 that we hope your father-in-law comes through this, we
13 hope it ends up being something minor and that he is
14 okay, but we wanted to thank you for your service and
15 give you a pass.

16 THE JUROR: All right. Thank you very, very,
17 very much.

18 THE COURT: You are very, very welcome.

19 THE JUROR: Thank you.

20 THE COURT: Thank you.

21 THE JUROR: All right. Thank you.

22 THE COURT: So you -- if you don't mind,
23 just -- you're going to get your belongings and -- does
24 everybody else know?

25 THE JUROR: I didn't say anything because I --

1 I wasn't sure. I mean, I don't mind saying that.

2 THE COURT: I don't think it -- I think you
3 can explain to them that you -- you know, you had a
4 family issue and that the Court has excused you because
5 of it.

6 THE JUROR: Okay. Thank you. Thank you all
7 very much. I appreciate it.

8 THE COURT: Good luck.

9 THE JUROR: Thank you.

10 (Juror excused.)

11 THE COURT: All right. Anything else while
12 we're all standing here? Anything?

13 MR. FALKNER: No, your Honor.

14 MS. KRASINSKI: No.

15 THE COURT: Okay. You're still okay with all
16 that ammunition sitting out there, the uncharged
17 ammunition? I noticed that the government --

18 MR. FALKNER: I don't know that it needs to be
19 on display throughout the entire trial.

20 THE COURT: Well, it looks like every piece of
21 it has been agreed to by you.

22 MR. FALKNER: I agreed to it -- I agreed to it
23 as an exhibit. I don't know if the -- it needs to be
24 out of the box, all of the ammunition. I realize that
25 the guns are there, but I don't know if all of the bags

1 need -- if it's going to be used during the opening
2 statement, then that's fine, but I don't know that it
3 needs to be -- the jury doesn't need to be constantly
4 looking at it throughout the whole trial.

5 MS. KRASINSKI: We don't have a problem
6 putting it back in the box. We did try to sort of move
7 it to the table that is angled away from where the jury
8 is --

9 THE COURT: Okay.

10 MS. KRASINSKI: -- and have the firearms be
11 sort of central, but we can certainly put the
12 ammunition --

13 THE COURT: And you're not objecting to the
14 ammunition. I'm just raising it as the trial judge.
15 And this is --

16 MR. FALKNER: Right.

17 THE COURT: -- obviously material that is not
18 charged. So obviously they're seeing the ammunition.
19 If it's kept in the box, it's part of your story, you're
20 going to have the officer maybe identify certain pieces
21 and you don't object to that. That seems the preferred
22 approach.

23 MS. KRASINSKI: Okay.

24 THE COURT: All right.

25 MS. KRASINSKI: It may take us two or

1 three minutes to put it back in the box --

2 THE COURT: Not a problem.

3 MS. KRASINSKI: -- before the jury comes out.

4 THE COURT: I'll be sitting there anyway. We
5 all are there when the jury comes out. So I'll just go
6 ahead and take the bench and give you time.

7 And you're ready to go?

8 MS. WEILAND: Yes.

9 THE COURT: And you're ready to go?

10 MR. FALKNER: Yes.

11 THE COURT: Excellent.

12 MS. KRASINSKI: I think after openings we were
13 going to ask the Court to read the stipulation. Or
14 would you prefer that I read the stipulation?

15 THE COURT: I -- whatever you guys want.

16 MR. FALKNER: I don't have a preference.

17 MS. KRASINSKI: Then I intend to ask the Court
18 to read it.

19 THE COURT: I will then -- I will read it and
20 tell them what a stipulation is.

21 MS. KRASINSKI: And then move to formally
22 admit and publish the agreed-upon exhibits.

23 THE COURT: Okay. All right. I think I have
24 the third amended list, so I think I at least have a
25 sense of what's -- are there any major disputes or are

1 you just waiting for foundation to be laid for certain
2 exhibits?

3 MR. FALKNER: Yes, there may -- yes. I think
4 it depends on the foundation --

5 THE COURT: Okay.

6 MR. FALKNER: -- that gets laid.

7 And then I thought there was another issue,
8 but --

9 THE COURT: Okay.

10 MR. FALKNER: -- it's escaping me right now.

11 THE COURT: All right. All right.

12 Now, obviously, if it's not clear to me what
13 the basis of an objection is and I'm overruling it and
14 you want to say further, you need to come up to sidebar.
15 And I don't think I have ever once told lawyers they
16 can't come to sidebar. So you can come to sidebar and
17 alert me to something at any time. I'm not going to say
18 no to that. All right?

19 MR. FALKNER: I was going to ask whenever the
20 government tries to introduce the -- the audio recording
21 that was the subject of today's hearing, I'd ask to be
22 heard at sidebar before that is introduced.

23 THE COURT: All right. And there were parts
24 of that that I couldn't -- I don't know that I heard
25 particularly well.

1 MS. KRASINSKI: I think the defendant's voice
2 is clear on it.

3 THE COURT: It is. His voice was clear.

4 MS. KRASINSKI: We have a rough transcript
5 that I made last night -- I can email it to you today --
6 just for myself. If the Court would prefer for us to
7 have a transcript, an agreed-upon transcript to pass
8 out --

9 THE COURT: What do you prefer? I mean,
10 obviously you're objecting to the admission, but I've
11 ruled that it comes in.

12 MR. FALKNER: I think it depends on the -- how
13 accurate the transcript is and --

14 THE COURT: Okay. You haven't shared that
15 with him yet?

16 MS. KRASINSKI: No. I mean, we just got it
17 yesterday.

18 THE COURT: All right. When is it going to
19 come in?

20 MS. KRASINSKI: We were going to move to admit
21 it today, but play it through a witness, publish it
22 through a later witness, possibly --

23 THE COURT: This afternoon?

24 MS. KRASINSKI: -- this afternoon or tomorrow,
25 depending on --

1 THE COURT: So it's possible you could get him
2 the transcript and let him review that.

3 Okay. All right. I'll let you guys go out a
4 little bit ahead of me.

5 (Conclusion of chambers conference.)

6 MS. WEILAND: Your Honor, may I adjust the
7 podium before the jury comes in?

8 THE COURT: Of course.

9 MS. WEILAND: Thank you.

10 THE CLERK: All rise for the jury.

11 Please be seated and the jury remain standing,
12 please.

13 THE COURT: Go ahead and please swear in the
14 jury.

15 THE CLERK: Would you please raise your right
16 hand.

17 (Jury sworn by the deputy clerk.)

18 THE CLERK: Thank you. Please be seated.

19 THE COURT: All right. Good morning,
20 everyone.

21 Now, what I'm going to do now is give you some
22 brief preliminary instructions, probably not brief
23 enough, but then we'll hear opening arguments and then
24 the evidence.

25 All right. Before we begin the trial, I'd

1 like to tell you about what will be happening. I want
2 to describe how the trial will be conducted and explain
3 what we will be doing. At the end of the trial, I will
4 give you more detailed guidance in writing on how you're
5 to go about reaching your decision, but now I simply
6 want to explain how the trial will proceed.

7 The criminal case has been brought by the
8 United States Government. I will sometimes refer to
9 the government as the prosecution. The government is
10 represented at this trial by Assistant United States
11 Attorneys Anna Krasinski and Kasey Weiland.

12 The defendant, Johnathon Irish, is represented
13 by his lawyer, Benjamin Falkner.

14 The charge against Mr. Irish is contained in
15 the indictment. The indictment is simply the
16 description of the charge made by the government against
17 Mr. Irish. It is not evidence of anything. Mr. Irish
18 pled not guilty to the charge against him and denies
19 committing the crime.

20 Mr. Irish is presumed innocent and may not be
21 found guilty by you unless all 12 of you unanimously
22 find that the government has proven Mr. Irish's guilt
23 beyond a reasonable doubt.

24 The indictment charges that Mr. Irish
25 committed the crime of possession of a firearm by

1 convicted felon. The first step in the trial will be
2 the opening statements. The government in its opening
3 statement will tell you about the evidence which it
4 intends to put before you so that you will have an idea
5 of what the government's case is going to be.

6 Just as the indictment is not evidence,
7 neither is the opening statement. Its purpose is only
8 to help you understand what the evidence will be and
9 what the government will try to prove.

10 After the government's opening statement,
11 Mr. Irish's attorney will make an opening statement. At
12 that point in the trial, no evidence will have been
13 offered by either side.

14 Next the government will offer evidence that
15 it says will support the charge against Mr. Irish. The
16 government's evidence in this case will consist of the
17 testimony of witnesses as well as documents and
18 exhibits.

19 Now, some of you probably have heard the term
20 circumstantial evidence and direct evidence. Do not be
21 concerned with these terms. You are to consider all the
22 evidence given in this trial, both circumstantial and
23 direct.

24 After the government's evidence, Mr. Irish's
25 lawyer may present evidence on Mr. Irish's behalf, but

1 is not required to do so. I remind you, Mr. Irish is
2 presumed innocent and the government must prove his
3 guilt beyond a reasonable doubt. Mr. Irish does not
4 have to prove his innocence.

5 After you've heard all the evidence on both
6 sides, the government and the defendant will be given
7 time for their final arguments. I just told you that
8 opening statements by the lawyers are not evidence. The
9 same applies to the closing arguments. They are not
10 evidence either. In their closing arguments, the
11 lawyers will be attempting to summarize their cases and
12 help you understand the evidence.

13 The final part of the trial occurs when I
14 instruct you about the rule of law which you are to use
15 in reaching your verdict. I will give each of you a
16 written copy of my instructions and I'll read them to
17 you out loud. After hearing my instructions, you'll
18 leave the courtroom together to make your decision.
19 Your deliberations will be secret. You'll never have to
20 explain your verdict to anyone.

21 Now that I've described the trial itself, let
22 me explain the jobs that you and I are to perform during
23 the trial.

24 I will decide which rules of law apply to this
25 case. I will decide this in response to questions

1 raised by the attorneys as we go along and also in the
2 final instructions given to you after the evidence and
3 arguments are completed.

4 You will decide whether the government has
5 proved beyond a reasonable doubt that Mr. Irish
6 committed the charged crime. To help you follow the
7 evidence, I will now give you a brief summary of the
8 elements of the crime charged, each of which the
9 government must prove beyond a reasonable doubt to make
10 its case.

11 For you to find Mr. Irish guilty of possession
12 of a firearm by a convicted felon, you must find beyond
13 a reasonable doubt each of the following elements:

14 First that the defendant has been convicted in
15 any court of at least one felony, that is, a crime
16 punishable by imprisonment for a term exceeding one
17 year; second, that the defendant knew he'd been
18 convicted of a felony, a crime punishable by
19 imprisonment for a term exceeding one year; third, that
20 after being convicted of a felony, the defendant
21 knowingly possessed the firearms described in the
22 indictment; and, fourth, that the firearms described in
23 the indictment were connected with interstate or foreign
24 commerce.

25 Now, you should understand that what I've just

1 given you is only a preliminary outline. At the end of
2 the trial, I'll give you a final and controlling set of
3 instructions on these matters.

4 During the course of the trial, you should not
5 talk with any witness or with Mr. Irish or with any of
6 the lawyers in the case. Please don't talk with them
7 about any subject at all.

8 In addition, during the course of the trial,
9 you should not talk about the trial with anyone else;
10 not your family, not your friends, not the people you
11 work with, not even your fellow jurors. You should not
12 discuss this case among yourselves until I have
13 instructed you on the law and you've gone to the jury
14 room to make your decision at the end of the trial.

15 It is important that you wait until all the
16 evidence is received and you have heard my instructions
17 on the law before you deliberate among yourselves.

18 Further, you should not communicate with
19 anyone else or the outside world about this case during
20 any part of the trial. This prohibition applies to both
21 receiving information and to giving information. Do not
22 email about it, text, tweet, or share information about
23 it on any blog or website, including Facebook, Google,
24 MySpace, LinkedIn, or YouTube. You may not use any
25 similar technology or social medium, even if I've not

1 specifically mentioned it.

2 To disseminate any information about the trial
3 during the trial, whether to your family or coworker or
4 to the world at large, would violate both my
5 instructions and the Court's rules and could lead to a
6 mistrial in this case.

7 Let me add that during the course of the trial
8 you will receive all the evidence you properly may
9 consider to decide the case. Because of this, you
10 should not attempt to gather any information on your own
11 which you might think would be helpful.

12 Do not engage in any outside reading on this
13 case, the matters in the case, or the individuals
14 involved in the case -- not on the Internet, not in the
15 library, not in your own house. Do not attempt to visit
16 any places mentioned in the case and do not in any other
17 way try to learn about the case outside the courtroom.

18 Now that the trial has begun, you must not
19 read about it in the newspapers or watch or listen to
20 television or radio reports or read Internet news
21 reports, blogs, chat rooms, or anything else about what
22 is happening here.

23 Many people watch television shows or movies
24 about courts or lawyers or the criminal justice system.
25 Sometimes people are affected by that when they serve as

1 jurors. Television shows and movies can create false
2 expectations about real life; for example, how the
3 trial's going to proceed or what the evidence might look
4 like. You must decide this case on the evidence before
5 you and the law as I give it to you. Do not decide this
6 case even in part based on something you saw on
7 television or in a movie. That is improper and unfair.

8 The reason for these rules, as I'm certain you
9 will understand, is that your decision in this case must
10 be made solely on the evidence presented at this trial.
11 I expect you will inform me if you become aware of any
12 violation of my instructions.

13 At times during the trial a lawyer may make an
14 objection to a question asked by another lawyer or to an
15 answer by a witness. This simply means that the
16 lawyer's requesting that I make a decision on a
17 particular rule of law. Do not draw any conclusions
18 from such objections or from my rulings on the
19 objection. These only relate to the legal questions
20 that I must determine and should not influence your
21 thinking.

22 If I sustain an objection to a question, the
23 witness may not answer it. Do not attempt to guess what
24 answer might have been given had I allowed the question
25 to be answered. Similarly, if I tell you not to

1 consider a particular statement, you should put that
2 statement out of your mind and you may not refer to that
3 statement in your later deliberations.

4 Further, a particular item of evidence is
5 sometimes entered for a limited purpose. That is, it
6 can be used for you for -- by you for a particular
7 purpose and not for any other purpose. I will tell you
8 when that occurs and instruct you on the purposes for
9 which the item can and cannot be used.

10 During the course of the trial, I may ask a
11 question of a witness. If I do, that does not indicate
12 I have any opinion about the facts in the case. You
13 should not take anything that I may say or do during the
14 trial as indicating what I think about the evidence or
15 what your verdict should be.

16 Let me clarify something ahead of time that
17 may occur in the case. During the course of the trial,
18 I may have to interrupt the proceedings to confer with
19 the attorneys about the rule of law which should apply
20 here. Sometimes we talk here at the bench, but some of
21 these conferences may take some time.

22 So as a convenience to you and to make sure
23 you're as comfortable as possible, I will excuse you
24 from the courtroom. I'll try to avoid such
25 interruptions as much as possible, but please be

1 patient. Even if the trial seems to be moving slowly,
2 these conferences can ultimately save time.

3 If at any time during the trial you have a
4 problem you'd like to bring to my attention, please
5 inform my courtroom deputy. This goes for all issues.
6 If you feel ill or need to take a restroom break or --
7 just let the courtroom deputy know. I want you to be
8 comfortable, so please do not hesitate to tell us about
9 any problem.

10 Finally, in this trial you have my permission
11 to take notes during the evidence. The fact that you've
12 been given permission to take notes does not in any way
13 require you to do so. However, if you decide to take
14 notes, please observe the following limitations with
15 great care: First, do not allow your note-taking to
16 distract you from listening carefully to the testimony
17 that is being presented. It's important that you
18 observe and listen to the witnesses. If you would
19 prefer not to take notes at all, but simply to listen,
20 please feel free to do that.

21 Please remember also that not everything you
22 write down is necessarily what was said. Thus, when you
23 begin your deliberations, do not assume simply because
24 something appears in somebody's notes that it
25 necessarily took place in court. Notes are an aid to

1 recollection, nothing more. The fact that it's written
2 down doesn't mean that it's necessarily accurate.

3 With these limitations, you're granted
4 permission to take notes. At the end of each day and
5 during any breaks during the day, please place your
6 notes in the envelope which has been provided to you.
7 That envelope will be taken and secured each night. The
8 envelope will be returned to you at the beginning of
9 each day. At the conclusion of the case, after you've
10 used your notes in deliberations, they will be
11 collected. They will be destroyed. Nobody will see
12 them. No one will violate the secrecy of your
13 deliberations.

14 As you can see, we have a court reporter who's
15 creating a record of everything that happens in this
16 trial. Sometimes jurors think that they will be able to
17 have a transcript of the trial when they go back to the
18 jury room. That is not true. You will not be given a
19 transcript.

20 There are a number of reasons for that, but
21 one of the reasons is strictly practical. Usually
22 there's just not enough time to prepare one. The court
23 reporter has a difficult job. It's a time-consuming
24 task to take a raw record which she is creating and turn
25 it into a final transcript.

1 So you will not have a transcript and you
2 should listen, therefore, very carefully and take
3 whatever notes you think may be necessary to help you
4 remember the testimony.

5 If you choose not to take notes, remember it's
6 your own individual responsibility to listen carefully
7 to the evidence. You can't give that responsibility to
8 someone who is taking notes. We depend on the judgment
9 of all members of the jury. You all must remember the
10 evidence in the case.

11 Finally, do not discuss this case with your
12 fellow jurors until all the evidence is in, you've heard
13 my instructions on the law, and I instruct you to begin
14 your deliberations.

15 Similarly, do not make up your mind about what
16 the verdict should be until you and your fellow jurors
17 have discussed the evidence and deliberated. Keep your
18 mind open and do not ever forget that Mr. Irish is
19 presumed innocent of this charge now, throughout this
20 trial, and throughout your deliberations until such time
21 as all 12 of you find the government has proven each
22 element of the charged crime beyond a reasonable doubt.

23 All right. Let me have Attorney Weiland for
24 the government do your opening statement.

25 MS. WEILAND: Thank you, your Honor.

1 MR. FALKNER: Could we be briefly seen at
2 sidebar, your Honor?

3 THE COURT: Yes.

4 AT SIDEBAR

5 MR. FALKNER: Just two quick issues, your
6 Honor.

7 With regard to the motion to sequester, Agent
8 Kevin LeBlanc is in the courtroom and he has been
9 sequestered, so --

10 MS. WEILAND: He's not in the courtroom any
11 longer.

12 MR. FALKNER: He's --

13 MS. WEILAND: He stepped out when opening
14 began.

15 MR. FALKNER: Oh, he's not in the back right
16 there?

17 MS. WEILAND: No.

18 MR. FALKNER: Oh, I'm sorry. I've mistaken
19 him from somebody else, a mistaken identity.

20 And, second, there was an agreement, as you're
21 aware, to strike one of the firearms from the indictment
22 and I'd move that that be done at this time before the
23 opening statements.

24 MS. KRASINSKI: I assent, your Honor.

25 THE COURT: I know. Everybody assents to

1 that, so that is stricken.

2 Now, I don't give the actual indictment to the
3 jury. I describe in my jury instructions firearms
4 described in the indictment and I tell them generally in
5 the final charge the two firearms at issue, but I just
6 describe them generally in my instructions at the end.
7 Obviously you can do what you do with regard to
8 describing to them what's in the indictment, but that's
9 how I handle it. So they won't be looking at a redacted
10 indictment at any point.

11 MR. FALKNER: I understand.

12 THE COURT: All right. So that is granted.
13 That is struck from the indictment.

14 Anything else.

15 MS. KRASINSKI: No, your Honor.

16 MR. FALKNER: Thank you.

17 THE COURT: All right.

18 MS. WEILAND: Okay.

19 THE COURT: Are you ready?

20 MS. WEILAND: Yes.

21 CONCLUSION OF SIDEBAR

22 THE COURT: Attorney Weiland.

23 MS. WEILAND: Good morning. Thank you all for
24 being here today.

25 My name is Kasey Weiland and my colleague,

1 Anna Krasinski, and I represent the United States in
2 this matter.

3 Johnathon Irish, the defendant, is a convicted
4 felon. He is prohibited by federal law from possessing
5 firearms. The government's proof is going to show that
6 during 2018 and 2019, Mr. Irish possessed a Sig Sauer
7 1911 semiautomatic handgun and a Catamount Fury
8 semiautomatic shotgun. We will also show that both of
9 these firearms traveled in interstate commerce. That
10 just means that at some point they crossed a state line.

11 You are also going to hear during the course
12 of this trial about a third firearm, a firearm that
13 Mr. Irish is not charged with possessing. That firearm
14 is a Sig Sauer AR-style rifle.

15 I want you to keep in mind as you're hearing
16 the evidence in this case that it is those first two
17 firearms I mentioned, the 1911 pistol and the Catamount
18 Fury shotgun, that Mr. Irish is charged with in this
19 case. I'm going to talk a little bit more about those
20 firearms as we go through what we expect the evidence
21 will be in this case.

22 To sort of understand how it is that we got
23 here today, we have to go back to 2013. In 2013, the
24 FBI took possession of some property belonging to
25 Mr. Irish. That property included the 1911 Sig Sauer

1 handgun and also that Sig Sauer AR-style rifle.

2 Now, at that time, in 2013, Mr. Irish was not
3 a convicted felon. But at a later point in 2014,
4 Mr. Irish was convicted of a felony. So come 2015, when
5 the FBI was set to dispose of that property, they could
6 no longer lawfully return those firearms to Mr. Irish.

7 So after consulting with Mr. Irish, the FBI
8 agreed to release those two firearms to a friend of
9 Mr. Irish's family, a person named Roscoe Whitney. And
10 you're going to hear from Mr. Whitney during the course
11 of this trial.

12 He will testify that he agreed to take
13 possession of those firearms from the FBI. He will also
14 testify that in connection with his receipt of those
15 firearms, he agreed that he would not under any
16 circumstances return those firearms to Mr. Irish.

17 You will hear, however, that Mr. Whitney did
18 return those firearms to Mr. Irish. He will testify
19 that sometime in September of 2017, Mr. Irish showed him
20 some paperwork. And based on that paperwork, it was
21 Mr. Whitney's understanding that Mr. Irish was permitted
22 to possess firearms again.

23 And based on that understanding, Mr. Whitney
24 returned that Sig Sauer 1911 handgun and the AR-style
25 rifle back to Mr. Irish. He will describe the

1 circumstances surrounding his return of those firearms
2 and he will testify that after that day in
3 September 2017, Mr. Whitney never laid eyes on those
4 firearms again.

5 So fast-forward to December of 2018. You're
6 going to hear that the FBI at that time received a tip,
7 a tip that Mr. Irish may be in possession of firearms
8 again.

9 Now, the FBI was familiar with Mr. Irish, knew
10 him to be a convicted felon, knew him to be prohibited
11 from possessing firearms, and so they opened an
12 investigation. That investigation really did not gain
13 traction until about October of 2019. And during
14 October and November of 2019, the FBI interviewed
15 numerous witnesses.

16 And through the course of their investigation,
17 they learned that on or about October 25th of 2019,
18 Mr. Irish asked his cousin, Neil Prive, to take his
19 firearms. Mr. Prive went to the defendant's home and
20 the defendant presented him with a large, black box. It
21 had a lock on it. And those -- that box contained those
22 firearms.

23 Mr. Prive took that box to his home. When he
24 got there, he unlocked it and he removed three firearms
25 from that case; the 1911 Sig Sauer handgun, that

1 AR-style rifle, and a third firearm, a Catamount Fury
2 semiautomatic shotgun, one of the firearms that is
3 charged in the indictment.

4 Mr. Prive secured those firearms in a safe at
5 his home. There were some other items in that case,
6 some ammunition and some other accessories, that
7 remained in that case and Mr. Prive stored those items
8 in his home for a couple of weeks before arrangements
9 were made for Mr. Prive to meet with a third individual,
10 a person named Gerald or Gary Roya, another friend of
11 the Irish family.

12 And it was arranged that Mr. Prive would meet
13 Mr. Roya and transfer those firearms to him. And that's
14 what happened. Mr. Prive and Mr. Roya exchanged some
15 text messages, they agreed to meet, and on or about
16 November 17th of 2019, Mr. Prive met Mr. Roya in a
17 McDonald's parking lot in Epsom, New Hampshire, and
18 transferred that big, black case containing those three
19 firearms to Mr. Roya. And after that point, Mr. Prive
20 never saw those firearms again.

21 From that point, Mr. Roya took that black case
22 back to his home in Exeter. When he got there, he
23 inventoried the contents, which included those same
24 three firearms we've talked about, and then he locked
25 the case and he stored it away in his attic. And that

1 is where the FBI found those firearms the week of
2 Thanksgiving, just about a week or two after Mr. Roy a
3 collected them from Mr. Prive.

4 The FBI went to Mr. Roy a's home the Wednesday
5 before Thanksgiving, they located the firearms, and
6 confirmed with Mr. Roy a that he had received them from
7 Mr. Prive just a week or two earlier.

8 Now, Mr. Roy a is also going to testify.
9 You'll hear from him in this trial. He will talk to you
10 about receiving those firearms. He's also going to talk
11 to you about a document that he was asked to sign
12 relating to those firearms.

13 Now, it is a document that appears to transfer
14 the weapons from Roscoe Whitney -- remember, who had
15 some of those firearms back in 2015 -- directly to
16 Gerald Roy a. Gerald Roy a's signature is on that
17 document, Roscoe Whitney's signature is on that
18 document.

19 But Gerald Roy a will testify that he did not
20 receive those firearms from Roscoe Whitney and Roscoe
21 Whitney will testify that he did not give those firearms
22 to Gerald Roy a. Both of them signed the document, both
23 were presented with that document by Nancy Haskell, the
24 defendant's mother, and were instructed to sign. And
25 they did so.

1 Now, you may be wondering what was going on
2 with these firearms from the time Mr. Whitney gave them
3 back to Mr. Irish in September 2017 and the time that
4 Mr. Irish gave them to Neil Prive in October of 2019.

5 You're going to hear from numerous witnesses
6 who will put one or more of those firearms in the
7 defendant's hands during that time frame. You're going
8 to hear that the defendant had those guns at his house,
9 that he liked to show them off, that he was very proud
10 of those guns and he was even known to carry the 1911 on
11 his hip.

12 Some of the witnesses that you're going to
13 hear from in this case are Peter Duguay, the defendant's
14 neighbor and former employer; Elizabeth Millett, the
15 defendant's mother-in-law; David Marcotte, a friend of
16 the defendant; Dylan Roosa, a former friend of
17 Mr. Irish; and then Neil Prive, the defendant's cousin;
18 and also Gerald Roy and Roscoe Whitney, who we've
19 already talked about.

20 Now, you're going to hear that two of these
21 witnesses, Elizabeth Millett and Dylan Roosa, agreed to
22 act as confidential sources with the FBI to assist in
23 the FBI's investigation of Mr. Irish. All that means
24 essentially is that they agreed to try to gather
25 information that might be helpful to the investigation

1 and report it back to law enforcement.

2 I suspect that the proof is going to show that
3 both Ms. Millett and Mr. Roosa severed ties with the
4 defendant either before agreeing to act as confidential
5 sources or shortly thereafter and so the duration and
6 the extent of their assistance with the FBI was somewhat
7 limited for that reason. But you'll hear more about
8 that through the testimony of the witnesses.

9 Now, you're also going to hear about Roscoe
10 Whitney and some of his interactions with the FBI.
11 You're going to hear that Mr. Whitney was first
12 interviewed by the FBI on the day Johnathon Irish was
13 arrested. And during that initial interview with the
14 FBI, you're going to hear that Mr. Whitney provided some
15 information relating to those firearms that was not
16 truthful.

17 Mr. Whitney will tell you why he did that. I
18 expect he will testify that he was instructed what to
19 say if he was asked about those firearms. I expect he
20 will testify about his later interviews with the FBI and
21 the information that he eventually conveyed to them and
22 I believe he will also testify and tell you how he feels
23 today about that initial conversation with the FBI. And
24 I ask you to take all of that into account as you're
25 assessing his testimony.

1 Now, you have heard about the origin of two of
2 the firearms in this case, the 1911 handgun and that
3 AR-style rifle. You've heard that those were collected
4 from the defendant in 2013 and that they were released
5 to Mr. Whitney. You might be wondering about this third
6 firearm, the Catamount Fury shotgun, where did it come
7 from.

8 Well, we expect that you're going to hear
9 testimony during this trial that that firearm, the
10 Catamount Fury shotgun, once belonged to a good friend
11 of the defendant, a friend named Anthony Costello, known
12 to the defendant as Tony, that Tony died in January of
13 2018. When Tony died, he left the defendant a vehicle,
14 a pickup truck, and it's approximately a year after Tony
15 dies in roughly January of 2019 that the defendant is
16 first seen with that Catamount Fury shotgun.

17 Dylan Roosa will testify that he saw the
18 defendant with that gun at his home on several occasions
19 and that gun was in that black box that the defendant
20 gave to Neil Prive in October of 2019.

21 I think you'll hear that this is a rather
22 distinctive firearm, that it has some distinctive
23 characteristics. I'm going to ask you to consider that
24 testimony when you're considering the origin of that
25 firearm.

1 Now, final question you may be asking yourself
2 at this point -- I have talked to you about three
3 firearms that the defendant possessed during this time
4 frame. Recall, though, that only two of those are
5 charged in the indictment. Mr. Irish is charged with
6 possession of that 1911 Sig Sauer handgun and the
7 Catamount Fury shotgun.

8 During the course of this trial, you are going
9 to hear testimony from Special Agent John Forte. He is
10 with the Bureau of Alcohol, Tobacco, and Firearms. And
11 he is going to talk to you about the movement of these
12 firearms in interstate commerce.

13 In his testimony, he will testify that two of
14 the firearms, the handgun and the shotgun, traveled in
15 interstate commerce. All that means is that those
16 firearms, after final assembly, crossed a state line at
17 some point.

18 As to the rifle, I anticipate that Special
19 Agent Forte will testify that while some of the
20 components of the firearm may have traveled at some
21 point in interstate commerce, he could not definitively
22 conclude that the firearm, after being fully assembled,
23 ever crossed a state line. And for that reason,
24 Mr. Irish is not charged with that firearm.

25 Nevertheless, the proof in this case will show

1 that Mr. Irish possessed that 1911 handgun and the
2 Catamount Fury shotgun, both of which traveled in
3 interstate commerce.

4 And once you have heard all of the evidence in
5 this case, we will ask you to find the defendant,
6 Johnathon Irish, guilty as charged in the indictment.

7 Thank you.

8 THE COURT: Thank you, Attorney Weiland.
9 Attorney Falkner.

10 MR. FALKNER: Good morning, ladies and
11 gentlemen.

12 My name is Benjamin Falkner and I represent
13 Mr. Irish. At the end of this trial, I'm going to be
14 returning to you and I'm going to be asking that you
15 find Mr. Irish not guilty of these charges.

16 This case is not about whether Mr. Irish
17 didn't want to have the firearms. This case is not
18 about whether Stephanie Irish possessed the firearms.
19 The evidence is going to show that Stephanie Irish,
20 Mr. Irish's wife, had these weapons in her home, which
21 she had every right to do. Mr. Irish did not have
22 possession of the firearms during the time that's
23 charged in the indictment and I'm going to explain to
24 you why.

25 The evidence will show that at some point two

1 of the firearms that are in evidence in this case and
2 only one of the firearms that's charged before your
3 Honor were seized by the FBI and then at some point
4 after Mr. -- after Mr. Irish was convicted of a crime
5 punishable by more than a year of imprisonment -- and
6 that's what the word felony means, simply a crime that's
7 punishable by more than a year of imprisonment.

8 After he became no longer entitled to possess
9 a firearm that had traveled in interstate commerce,
10 those two weapons were returned to Mr. Roscoe Whitney.
11 They were returned also to Mr. Roscoe Whitney along with
12 a firearm that was owned by Stephanie Irish. There were
13 three firearms that were returned to Roscoe Whitney; two
14 belonged to Johnathon Irish and one belonged to
15 Stephanie Irish and Roscoe Whitney took control of those
16 firearms.

17 So Stephanie Irish is not somebody who's never
18 possessed firearms. She is -- she's intricately
19 involved in this case.

20 You'll hear that it was a troubled marriage
21 between Johnathon Irish and Stephanie Irish. There's
22 going to be a fair amount of evidence about the troubles
23 in the marriage. And on October 25th of 2019, Stephanie
24 Irish left Johnathon Irish. And that set in motion the
25 chain of events that led to you being here today.

1 When Stephanie Irish left Mr. Irish, he
2 obviously realized that her weapons were still in that
3 home after she left.

4 You'll hear from Peter Duguay, who was
5 Mr. Irish's boss. Peter Duguay will testify essentially
6 that he melted down when he found out that Stephanie had
7 left him. At that time, he asked Mr. Duguay to take a
8 box from him.

9 And just backing up as to Mr. Duguay,
10 Johnathon Irish, who talked about firearms a fair bit of
11 time, had told Mr. Duguay that the 1911 handgun belonged
12 to Stephanie Irish when he was talking about it.

13 And so he melted down. He asked Mr. Duguay to
14 take the box. Mr. Duguay said no.

15 Then he called David Marcotte and he said, I
16 need you to take the 1911. Mr. Marcotte said -- and
17 what he said was I'm afraid of what I might do with it.

18 But he said, I need you to take the 1911 and
19 Mr. Marcotte said, no, I won't take the weapon, but I'll
20 watch your kids when you go to a court hearing. I'm not
21 quite sure that I understand that response, but that's
22 how Mr. Marcotte responded. He didn't take them.

23 And you'll hear from Mr. Prive. It was Nancy
24 Haskell that reached out to Mr. Prive and said, hey, I
25 need you to go up to get those firearms from -- out of

1 Johnathon's house. And Neil goes up, he takes the
2 firearms, and he delivers them ultimately to Gary Roy.

3 Now, essentially why is it that Johnathon
4 Irish would be afraid of having those firearms in that
5 house? As you know, he knows he was convicted of a
6 crime punishable by more than a year of imprisonment.
7 He's agreed to that. The government is going to read
8 that stipulation.

9 He was aware of that. He was aware that
10 Stephanie Irish was no longer in that house. They're
11 her guns. He can't be alone in that house with those
12 guns. They belong to her. There's a padlock on that
13 box.

14 Now, there are only two people that you will
15 hear of that put any of these firearms in the hands of
16 Johnathon Irish at any time before Stephanie leaves.
17 The first of them is Elizabeth Millett.

18 Elizabeth Millett becomes a confidential
19 informant to the FBI in the winter of 2019. She starts
20 reporting that she's seen Johnathon Irish with firearms.

21 But what you'll know about Ms. Millett at that
22 time is she's really upset about the problems in the
23 marriage between Johnathon and Stephanie and she's not
24 getting along with Johnathon and Stephanie and she feels
25 that they're a financial drain to her. She feels that

1 they're a burden. The entire family isn't getting
2 along. Stephanie isn't speaking with her mother. And
3 her mother wants to get her and Johnathon apart.

4 She keeps talking to the FBI, she keeps
5 reporting, and then in April of 2019, Ms. Millett goes
6 in and files for a restraining order against Johnathon
7 Irish. And when she files for that restraining order,
8 there's a question on the application about whether he
9 has access to a firearm. And she checks no, but he has
10 owned a firearm in the past. That was the truth, but
11 what she was telling to the FBI was not the truth.

12 Time goes on and Ms. Millett and both
13 Stephanie and Johnathon Irish on the one hand and
14 Ms. Millett on the other hand are at loggerheads. They
15 end up in court proceedings and in September and there's
16 all kinds of problems between Stephanie Irish and her
17 mother, Elizabeth Millett.

18 And Elizabeth Millett attributes all of those
19 problems to Johnathon Irish. And that's why Elizabeth
20 Millett will be here in this courtroom, to essentially
21 fabricate her story about seeing Johnathon Irish with
22 firearms.

23 Now, let's talk about Dylan Roosa. Dylan
24 Roosa, supposedly the defendant's friend, reports to the
25 FBI that he was great friends with Johnathon Irish; he

1 knows about all the weapons. It turns out that he's
2 really friends with Stephanie Irish.

3 But he reports back in the summer, I went over
4 to Johnathon's house, we went out, we went shooting, and
5 we shot the 1911 handgun off into the woods. We had a
6 grand old time. I didn't know he was a convicted felon,
7 he'll tell you.

8 And they had a great old time and then there
9 was a falling out. What he tells the FBI, what he
10 refers to the FBI, is we had a falling out and it was
11 all about that he blamed my girlfriend for reporting to
12 Johnathon that Stephanie was cheating on him.

13 I don't know what all that means, but
14 basically what he's saying is there was this
15 interpersonal conflict between Johnathon and Dylan Roosa
16 and that's why he explains why he's no longer friends
17 with Johnathon Irish.

18 And the FBI makes him a confidential human
19 source. They enter into an agreement with him -- they
20 tell him, we're not promising you you'll get money --
21 but you'll see that the FBI identifies that one of the
22 source -- one of the motivating sources for Dylan Roosa
23 talking to them might be that he's a little hard up on
24 money. And, ultimately, he continues to meet with the
25 FBI and they pay him \$250 for all of his help. That's

1 in December of 2019.

2 Time goes by and they're getting ready for
3 this trial here. And he reports, yeah, when I was
4 telling you about all those problems I had with
5 Johnathon Irish and the reason why we weren't friends
6 anymore, I forgot to mention there was also this little
7 matter that I owed him a small debt.

8 Dylan Roosa is at odds with Johnathon Irish
9 over money. He owes Johnathon Irish money, he needs
10 money, he's getting then money from the FBI. You cannot
11 trust Dylan Roosa. And it turns out that as soon as
12 Johnathon Irish is arrested, he's off with Stephanie
13 Irish and they're taking the kids.

14 He -- he is involved -- he wants to help raise
15 Johnathon Irish's kids with Stephanie Irish. Dylan
16 Roosa is not a man whose testimony you should trust.

17 So you need to look at the witnesses whose
18 testimony does fit together and who you can follow and
19 essentially it's that -- it's this:

20 His wife has left him, he gets the firearms
21 out of the house, and he doesn't want it to look like he
22 was in possession of the firearms. Well, that's a
23 natural response. Is it a perfect response? No.

24 But everything he does is in the name of
25 getting the firearms out of his house and you'll hear no

1 good evidence that he actually was in possession of
2 those firearms, they were Stephanie's, and I would ask
3 when you come back at the end of this case, what this
4 case is about is whether the government can prove beyond
5 a reasonable doubt, the highest burden in the law, that
6 Johnathon Irish actually had the intention to exercise
7 dominion and control over those firearms and the only
8 evidence that you'll know about those firearms is that
9 he wanted them gone.

10 At the end of this case, I'll return to you
11 and ask you to find Mr. Irish not guilty. Thank you.

12 THE COURT: Thank you.

13 All right. I know the government intended at
14 this point to introduce a stipulation.

15 MS. KRASINSKI: Yes, your Honor. Would the
16 Court, please, want to read that to the jury?

17 THE COURT: Yes. You're asking me to read the
18 stipulation to the jury.

19 Any objection, Attorney Falkner? Any --

20 MR. FALKNER: No, your Honor.

21 THE COURT: All right. As the government
22 approaches with the stipulation, I'm going to explain to
23 you that these are facts to which the lawyers have
24 agreed or stipulated. And it means simply that the
25 government and the defendant accept the truth of a

1 particular proposition or fact.

2 And since there's no disagreement, there is no
3 need for evidence apart from the stipulation and you
4 must accept the stipulation as fact to be given whatever
5 weight you choose.

6 All right. And I'm going to now read to you
7 the stipulation of fact which is Government's
8 Exhibit 36.

9 The United States of America, by Scott W.
10 Murray, United States Attorney for the District of
11 New Hampshire through the undersigned U.S. Assistant
12 Attorneys, defendant Johnathon Irish and defendant's
13 counsel, Benjamin Falkner, enter into the following
14 stipulation of fact:

15 There is no dispute among the parties that on
16 December 11, 2014, defendant, Johnathon Irish, was
17 convicted of a felony punishable by imprisonment for a
18 term exceeding one year.

19 There is also no dispute among the parties
20 that beginning on December 11, 2014, and during the
21 period between December 26, 2018, and November 17, 2019,
22 defendant, Johnathon Irish, knew that he had previously
23 been convicted in a court of a felony punishable by
24 imprisonment for a term exceeding one year.

25 Finally, there is no dispute among the parties

1 that defendant, Johnathon Irish, has not been pardoned
2 for this offense and has not had his firearm rights
3 restored.

4 All right. So that is admitted as an exhibit.

5 (Government's Exhibit 36 admitted.)

6 THE COURT: Government may call its first
7 witness.

8 MS. KRASINSKI: Before that, your Honor, the
9 parties have agreed as to the authenticity and
10 admissibility regarding certain exhibits, so at this
11 time I formally move into evidence the following
12 exhibits.

13 THE COURT: All right. One -- let me get
14 my -- go ahead.

15 MS. KRASINSKI: 5, 6, 6A, 7, 7A, 8, 9, 9A, 9B,
16 9C, 9D, 9E, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20,
17 21, 22, 23, 24, 25, 26, 27, 27A, 27B, 27C, 27D, 27E,
18 27F, 28A, 28B, 28C, 28D, 28E, 28F, 28G, 28H, 28I, 28J,
19 28K, 28L, 28M, 28N, 28O, 28P, 28Q, 33, 35A, 35B, 35C,
20 35D, 35E, 35F, 35G, 35H, 35I, 35J, 35K, and 36.

21 THE COURT: All right. And you agree that
22 those are full exhibits, Attorney Falkner?

23 MR. FALKNER: Yes, your Honor.

24 THE COURT: All right. Those are admitted as
25 full exhibits.

1 (Exhibits admitted.)

2 MS. KRASINSKI: Permission to publish those
3 exhibits, your Honor.

4 THE COURT: At the time when they're relevant?

5 MS. KRASINSKI: Correct, your Honor.

6 THE COURT: All right. Go ahead.

7 MS. KRASINSKI: The United States calls
8 Special Agent Christiana.

9 THE CLERK: Agent Christiana, please remain
10 standing and raise your right hand.

11 **PHILIP CHRISTIANA**, having been first duly
12 sworn, testified as follows:

13 THE CLERK: Thank you. Please state your full
14 name, spell your last name for the record.

15 THE WITNESS: It's Philip M. Christiana. Last
16 name is C-h-r-i-s-t-i-a-n-a.

17 THE CLERK: Thank you very much.

18 DIRECT EXAMINATION

19 BY MS. KRASINSKI:

20 Q. Agent Christiana, are you employed?

21 A. I am.

22 Q. Where are you employed?

23 A. With the Federal Bureau of Investigation in
24 Bedford, New Hampshire.

25 Q. And how long have you worked for the FBI?

1 A. A little over 28 years.

2 Q. What is your current role?

3 A. I'm a supervisory special agent.

4 Q. And when did you become a supervisory special
5 agent?

6 A. Approximately 13 months ago.

7 Q. And what were you doing before that?

8 A. I was an investigator, field agent, for all
9 those years prior.

10 Q. And did you receive training to become a field
11 agent?

12 A. I did.

13 Q. Can you briefly describe that training?

14 A. The initial training -- is this too loud? I
15 feel like I'm too close to it.

16 The initial training was a 16-week training
17 course at the FBI Academy in Quantico, Virginia. Back
18 then, when I went through it at least, it was 16 weeks.

19 Q. And do you also serve as an FBI firearms
20 instructor?

21 A. I do.

22 Q. Do you have a personal interest in firearms?

23 A. I do.

24 Q. Can you just briefly explain that?

25 A. Yeah. I'm a competitive shooter. I've taught

1 firearms training at Sig Sauer Academy on a part-time
2 basis and I -- and one of my duties within the FBI is
3 a -- is as a firearms instructor.

4 Q. Now, I want to turn your attention to
5 Johnathon Irish. Are you familiar with Johnathon Irish?

6 A. I am.

7 Q. When did you first meet him?

8 A. In February of 2013.

9 Q. Do you see him in the courtroom here today?

10 A. I do.

11 Q. Can you please describe something that he's
12 wearing?

13 A. Yeah. He's got a white shirt and a black
14 jacket on, sitting at the defense table.

15 MS. KRASINSKI: Your Honor, will the record
16 please reflect that Agent Christiana has identified the
17 defendant?

18 THE COURT: Yes.

19 MR. FALKNER: Your Honor, may we very quickly
20 be seen at sidebar?

21 THE COURT: You want to approach?

22 MR. FALKNER: Yes.

23 THE COURT: Yes.

24 AT SIDEBAR

25 MR. FALKNER: I just want to note on the

1 record on the TV screen that's behind the witness is in
2 a small box a video of the witness testifying and if we
3 could have that taken down.

4 THE COURT: Do you see that, Donna?

5 THE CLERK: I think so.

6 MR. FALKNER: On the monitor behind -- right
7 behind the witness.

8 THE COURT: Do you think it's distracting?

9 MR. FALKNER: Right.

10 THE COURT: We'll try to get technology to
11 take care of it. You're not asking us to halt; we're
12 just going to --

13 MR. FALKNER: I think we can go forward, but
14 if it's that way through the trial, it's distracting.

15 THE COURT: While you're here, I'm going to
16 allow the case agents to remain throughout the trial.

17 MR. FALKNER: So my rights are preserved; I
18 don't need to approach?

19 THE COURT: You've made your objection, it's
20 preserved, as far as I'm concerned. If there's some
21 specific objection you want to bring to my attention,
22 feel free to renew it, but I've done the research on
23 that and I'm comfortable the case agent can stay.

24 MR. FALKNER: Please note my objection.

25 THE COURT: All right. Thank you.

1 CONCLUSION OF SIDEBAR

2 THE COURT: Apparently there's a little video,
3 that is, a real-time video. We're going to try to
4 remove that and hopefully it won't be distracting.
5 We're going to try to get our IT folks to fix that.

6 But go ahead.

7 Q. Now, I think you said you first met the
8 defendant in fall of 2013?

9 A. February of 2013, yes.

10 Q. February of 2013.

11 A. Yes.

12 Q. Now, I want to turn to fall of 2013. In fall
13 of 2013, were two of the defendant's firearms seized by
14 law enforcement?

15 A. They were.

16 Q. And, ultimately, did FBI take custody of those
17 two firearms?

18 A. We did, I did, in 2014.

19 Q. And what were those two firearms?

20 A. It was a Sig Sauer 1911 semiautomatic pistol
21 and a Sig Sauer 513 -- 516 semiautomatic rifle.

22 Q. Now, at the time that those two firearms were
23 seized, was the defendant a convicted felon?

24 A. No.

25 Q. So at that time when his firearms were seized,

1 no felony conviction precluded him from possessing those
2 firearms?

3 A. Correct.

4 MS. KRASINSKI: Your Honor, may I approach?

5 THE COURT: Yes.

6 Q. Agent Christiana, I'm handing you what's been
7 marked as Government's Exhibit 5.

8 Before we talk about that, I just want to ask
9 you, is it your understanding that all the firearms in
10 the courtroom today have been rendered safe?

11 A. Yes, absolutely.

12 Q. And inspected by the marshals before brought
13 into the courtroom?

14 A. I believe so, yes.

15 Q. Now, turning to Government's Exhibit 5, do you
16 recognize that firearm?

17 A. I do.

18 Q. Is that one of the defendant's firearms that
19 was seized in 2013?

20 A. It is.

21 Q. What type of firearm is that?

22 A. This is the -- this is the semiautomatic
23 pistol, the 1911 pistol, Sig Sauer brand.

24 Q. And what's the caliber?

25 A. It's a .45caliber.

1 Q. What does caliber mean?

2 A. Caliber is the diameter of the projectile.
3 It's -- you know, there's -- obviously there's a whole
4 host of ranges in pistol calibers, .45, you know, being
5 one of them.

6 Q. And is there a serial number on that firearm?

7 A. There is.

8 Q. What is it?

9 A. I believe it's GS34120.

10 Q. And what is a serial number as it relates to a
11 firearm?

12 A. Yeah, the serial number is the particular
13 identifier that distinguishes one firearm from another.
14 It's the one identifier that you can say basically it --
15 this is one firearm as opposed to another.

16 Q. So a serial number on a gun is unique to that
17 particular gun?

18 A. It is, absolutely.

19 Q. Now, is there anything different about that
20 1911 pistol now than when it was first seized in 2013?

21 A. Yes, there is.

22 Q. And what's that?

23 A. So there's -- it looks like an add-on
24 compensator, this metallic silver compensator that is
25 added to the muzzle end of the firearm. And that was

1 not there back when I was -- when this firearm was in my
2 custody.

3 MS. KRASINSKI: Does your Honor want me to ask
4 each time I approach or is asking --

5 THE COURT: No, you can approach throughout.
6 Thank you.

7 MS. KRASINSKI: Thank you, your Honor.

8 Q. I'm now handing you what's been marked as
9 Government's Exhibit 6. Do you recognize that firearm?

10 A. I do.

11 Q. What is it?

12 A. This is the Sig Sauer 516 semiautomatic rifle.

13 Q. And is that the defendant's firearm that was
14 seized in 2013?

15 A. Yes, it is.

16 Q. How do you know that?

17 A. From the serial number. I've compared the
18 serial numbers from some of the documentation that we
19 had back in 2015 to the serial number to this -- to both
20 firearms.

21 Q. And what is the serial number on that firearm?

22 A. So it's partially covered, but the last four
23 are 1626.

24 Q. Now -- thank you.

25 Let's talk a bit about what happened to these

1 firearms. In early July of 2015, were they still in FBI
2 custody?

3 A. They were.

4 Q. And at some point did the FBI arrange to
5 release those firearms?

6 A. We did. We did.

7 Q. And at that time, could you release them back
8 to the defendant?

9 A. Could not.

10 Q. And why not?

11 A. Because at that point he was a convicted
12 felon.

13 Q. And that means he can't legally possess those
14 firearms?

15 A. Any firearms.

16 Q. Now --

17 MR. FALKNER: Objection. May we be seen at
18 sidebar?

19 THE COURT: Yes.

20 AT SIDEBAR

21 MR. FALKNER: That testimony was untrue as a
22 matter of law. He has just testified that he cannot
23 legally possess any firearms and what's true is that he
24 cannot possess any firearms that have traveled in
25 interstate commerce. And I would ask that the jury be

1 instructed that his answer was incorrect and that the
2 answer is that he cannot legally possess firearms that
3 have traveled in interstate commerce.

4 MS. KRASINSKI: I think that's his
5 understanding of it. It's why the FBI didn't release
6 them to him. And, furthermore, at that time in 2015,
7 this December of 2019 case discussing the frames of
8 AR-style rifles wasn't in effect. The FBI said that
9 they didn't release the firearms to him because they
10 believed he couldn't possess them.

11 THE COURT: Under federal law, you're talking
12 about, interstate commerce.

13 MR. FALKNER: Correct. And under the state
14 law of New Hampshire, he's not prohibited from
15 possessing firearms. There's no law that prohibits him
16 from possessing firearms that did not travel in
17 interstate commerce.

18 THE COURT: Okay. Can you ask him a
19 clarifying question: You just said he can't possess any
20 firearm; did you mean by that -- you can ask him, I
21 think, a leading question to --

22 MS. KRASINSKI: I will. I can't guarantee his
23 answer, because he's not an ATF agent --

24 THE COURT: Okay.

25 MS. KRASINSKI: -- so he may not be familiar

1 with the interstate commerce requirements, but I'm happy
2 to ask the question.

3 THE COURT: And you can be leading in your --
4 in your question.

5 MR. FALKNER: And I'd just ask that it -- to
6 the extent that his answer is incorrect as a matter of
7 law, if the jury can be instructed as to what the
8 correct state of the law is.

9 THE COURT: Do you have any objection to me
10 simply saying to the jury, you're to understand that he
11 can't possess firearms that traveled in interstate
12 commerce?

13 MS. KRASINSKI: I don't have an objection to
14 it. I -- I don't have an objection to it.

15 THE COURT: All right. Hopefully you can cure
16 it with him.

17 MR. FALKNER: Okay. Thank you.

18 CONCLUSION OF SIDEBAR

19 Q. So, now, I just want to make sure that we're
20 clear and all on the same page about something.

21 As a convicted felon, the defendant is not
22 allowed to possess firearms under federal law and that
23 federal law requires as an additional element that the
24 firearm have traveled in interstate commerce, correct?

25 A. That -- yes, absolutely.

1 Q. Now, on July 7th of 2015, did you meet with
2 the defendant?

3 A. I did.

4 Q. And what was the purpose of that meeting?

5 A. It was -- I had to return some items to him
6 and it was also to consummate an agreement about how --
7 what the disposition of the firearms -- how they would
8 be dispositioned.

9 Q. So you have these firearms, FBI is not going
10 to return them to the defendant. Who gets to decide
11 where the defendant's firearms go to?

12 A. In this case, Mr. Irish did.

13 Q. And when you met with him on July 7th of 2015,
14 did you sign a document relating to the release of those
15 firearms?

16 A. He -- he did.

17 Q. He did?

18 A. He did, yes.

19 Q. I'm handing you what's been marked for
20 identification purposes as Government's Exhibit 1. Can
21 you please take a look at that. Do you recognize it?

22 A. I do.

23 Q. What is it?

24 A. This is the agreement that Mr. Irish signed
25 on July 7th, 2015, indicating where he wanted his

1 firearms -- what third party he wanted to take
2 possession of the firearms.

3 Q. How do you know that's what that document is?

4 A. Well, because I presented it to Mr. Irish for
5 signature that day. We had drafted it, obviously, and
6 he agreed to it.

7 Q. So you saw the defendant sign it?

8 A. I did.

9 Q. And are your initials on that document as
10 well?

11 A. They are. They are.

12 MS. KRASINKSI: Your Honor, I move to strike
13 the ID on Government's Exhibit 1.

14 THE COURT: Any objection?

15 MR. FALKNER: No, your Honor.

16 THE COURT: Exhibit 1 is a full exhibit.

17 MS. KRASINSKI: Permission to publish, your
18 Honor.

19 THE COURT: Yes.

20 (Government's Exhibit 1 admitted.)

21 MS. KRASINSKI: Let's take a look at
22 Government's Exhibit 1.

23 Ms. Sheff, can you --

24 MS. SHEFF: Just one second.

25 MS. KRASINSKI: Thank you.

1 And let's enlarge the top through the first
2 set of signatures and focus on that first.

3 Q. Now, Agent Christiana, can you please --
4 paragraph 1, can you please read the highlighted
5 portion?

6 A. Yeah. It says Johnathon Irish and then it
7 describes the Sig Sauer 516 5.56 caliber AR-type rifle
8 bearing serial number 53E, as in echo, 001626, and then
9 is also highlighted, "belonged to me."

10 Q. And so this is indicating that Government's
11 Exhibit 7 -- 6, excuse me, this rifle, belonged to the
12 defendant?

13 A. Correct.

14 Q. Now, let's move down and look at paragraph 2
15 of Government's Exhibit 1.

16 And can you read that, please?

17 A. It says: The Sig Sauer .45 caliber 1911 type
18 pistol bearing serial number GS34120, and then "belonged
19 to me."

20 Q. And is that Government's Exhibit 5?

21 A. It is.

22 Q. So it's the defendant acknowledging that this
23 firearm, Government's Exhibit 5, belonged to him?

24 A. Correct.

25 Q. Let's go to the final portion of this

1 document.

2 Can you read the first sentence of that?

3 A. It says: I understand and agree that these
4 items will be turned over by the government to Roscoe
5 Whitney.

6 Do you want --

7 Q. Now --

8 A. Yeah.

9 Q. Again, I'm sorry. Who directed that the
10 firearms be released to Roscoe Whitney?

11 A. Mr. Irish.

12 Q. Now, I want to turn your attention to
13 July 14th of 2015. Did you meet Roscoe Whitney that
14 day?

15 A. I did.

16 Q. And for what purpose?

17 A. To turn over these firearms and some other
18 items to him.

19 Q. And when you turned some items over to him,
20 did you -- did you document the release of that property
21 in any way?

22 A. I did in several ways.

23 Q. How?

24 A. One way that we documented -- we always
25 document the return of property is through a standard

1 form we use. It's called an FD-597 and it lists every
2 item that is being presented to whoever this person is.
3 And it's signed by the receiver, person I'm presenting
4 the property to, and it's signed by me.

5 Q. Now, let's -- I'm handing you what's been
6 marked for identification purposes as Government's
7 Exhibit 3. Do you recognize that?

8 A. I do.

9 Q. What is it?

10 A. This is the FD-597 that I described.

11 Q. And does it relate to releasing property to
12 Roscoe Whitney?

13 A. It does.

14 Q. And how do you know that's what it is?

15 A. Well, I'm familiar with this form, but I
16 actually was there and I signed it along with
17 Mr. Whitney that day on July 14th, 2015.

18 Q. Now, what you have, it's not the original; is
19 that fair?

20 A. Correct.

21 Q. And is that because it has some personal
22 information redacted from it?

23 A. Exactly.

24 Q. Other than the redacting of that personal
25 information, is it a true and accurate copy of the

1 original receipt?

2 A. It -- yes, absolutely, it is.

3 Q. Now, was this receipt made at or near the time
4 that you transferred those items to Roscoe Whitney?

5 A. It was -- it was at the -- at the time.

6 Q. And was it made by someone with knowledge of
7 what items were transferred?

8 A. Correct.

9 Q. Is this form, the FD-597, kept in the ordinary
10 course of FBI business?

11 A. It is. It's bureau policy, you know, for the
12 return of any property.

13 Q. And so is -- as bureau policy, is it the
14 regular practice of the FBI to make and complete this
15 FD-597 when properly -- property is released from FBI
16 custody?

17 A. Absolutely it is.

18 MS. KRASINSKI: Your Honor, I move to admit
19 Government's Exhibit -- or strike the ID of Government's
20 Exhibit 3.

21 THE COURT: Any objection?

22 MR. FALKNER: No objection.

23 THE COURT: All right. Government's Exhibit 3
24 is a full exhibit.

25 (Government's Exhibit 3 admitted.)

1 MS. KRASINSKI: Permission to publish, your
2 Honor?

3 THE COURT: Yes.

4 Q. Now, let's enlarge from the name down through
5 the firearms that were released to Mr. Whitney.

6 What's the first firearm that was released to
7 Mr. Whitney?

8 A. It's the Sig Sauer 1911 handgun.

9 Q. And that was one of the defendant's firearms?

10 A. Correct.

11 Q. What's the second firearm on there?

12 A. That's a -- that's another firearm that was
13 seized, but -- not necessarily belonged to Mr. Irish,
14 but was -- that he had access to.

15 Q. Was that Stephanie Irish's gun?

16 A. I believe it was.

17 Q. So Stephanie Irish's gun was released to
18 Roscoe Whitney?

19 A. Correct.

20 Q. And what's the third firearm listed?

21 A. It's the Sig Sauer rifle and a bag, a rifle
22 bag that came along with it.

23 Q. Now, we won't go through it all right now, but
24 generally, what are some of the other items that you
25 returned to Mr. Whitney?

1 A. There were some -- there was various calibers
2 of ammunition, there was a pistol magazine, quite a bit
3 of ammunition, and I actually went down the list and had
4 to check it off with Mr. Whitney, just to make sure that
5 we all -- that we agreed on -- in what I was giving him.

6 There was a -- there was a magazine for an
7 AR-style -- there were several magazines for an AR-style
8 rifle.

9 Q. And when you returned the 1911 pistol,
10 Government's Exhibit 5, this compensator that's attached
11 to the muzzle, was it there when you returned this
12 firearm to Mr. Whitney?

13 A. It was not.

14 Q. Now, I want to turn your attention to
15 December 26th, 2018.

16 Were you working that day?

17 A. I was working.

18 Q. What happened that day?

19 A. I received a tip.

20 Q. What was generally the tip?

21 A. It was -- the general nature of it was that it
22 was indicating that Mr. Irish was in possession of some
23 firearms.

24 MR. FALKNER: Your Honor, I'd just ask for a
25 limiting instruction as to --

1 THE COURT: Can counsel please approach.

2 AT SIDEBAR

3 THE COURT: Are you asking for a limiting
4 instruction along the lines of you just heard testimony
5 that there was a tip and you're not to use that
6 testimony in any way to show Mr. Irish's consciousness
7 of guilt or his guilt in this case?

8 MS. KRASINSKI: Your Honor, I was going to
9 follow up with, you know, he passed the tip along and
10 then do you have any knowledge of whether or not
11 Mr. Irish possessed firearms in 2018 and 2019 and he
12 will say no. So I was going to follow up with that.

13 MR. FALKNER: I'm just asking, though, for
14 just that it can't be used for the truth of the matter
15 asserted, to be used to suggest that he did, in fact,
16 possess firearms, because it's hearsay.

17 MS. KRASINSKI: I don't think there needs to
18 be an instruction. We're not offering it for hearsay;
19 we're going to ask him what he did with it. Frankly, I
20 think an instruction is going to be confusing to the
21 jury. He got a tip. What he did with it was pass it
22 along, an investigation was opened. He doesn't know one
23 way or the other whether the tip was accurate and that
24 was it.

25 MR. FALKNER: As it stands, however, his

1 testimony, there's now substantive evidence that --

2 THE COURT: All right. I'm going to give the
3 limiting instruction.

4 MR. FALKNER: Thank you.

5 THE COURT: Thanks.

6 CONCLUSION OF SIDEBAR

7 THE COURT: You just heard testimony, ladies
8 and gentlemen of the jury, that Agent Christiana
9 received a tip that contained information in the tip.
10 You are not to consider that information for the truth
11 of the matter that Mr. Irish did or did not possess
12 firearms.

13 Q. So you received this tip. What do you do with
14 it?

15 A. I passed it on to some colleagues in my
16 office.

17 Q. And after that, were you involved in
18 investigating whether or not that tip was accurate?

19 A. I was not.

20 Q. So do you have any personal knowledge as to
21 whether or not the defendant possessed firearms in 2018
22 or 2019?

23 A. I do not.

24 Q. Now, on October 31st, 2019, were you working
25 that day?

1 A. I was.

2 Q. And what happened that day?

3 A. I received a phone call from Mr. Irish.

4 Q. And how do you know it was Mr. Irish?

5 A. He had called our office. He asked for me.

6 He was transferred to me. He identified himself and

7 then he wanted to discuss some issues with me.

8 Q. And did he give you a phone number, his phone
9 number, a phone number you could reach him at?

10 A. He did.

11 Q. Do you remember that phone number?

12 A. I do.

13 Q. What is it?

14 A. It's a 603 area code, 991-5718. I believe it
15 to be a cell phone number.

16 MS. KRASINSKI: Nothing further, your Honor.

17 THE COURT: All right. Let's take a morning
18 break. It'll be about ten minutes.

19 THE CLERK: All rise for the jury.

20 (Jury excused.)

21 (Recess taken from 10:32 a.m. until 10:43 a.m.)

22 THE COURT: Counsel, if you want a limiting
23 instruction at any point, just approach.

24 MR. FALKNER: May I proceed?

25 THE COURT: Yes, you may.

CROSS-EXAMINATION

BY MR. FALKNER:

Q. Good morning, Mr. Christiana.

A. Good morning.

Q. You said that you're a bit of a firearms enthusiast, correct?

A. Correct.

Q. And in that capacity, you have some familiarity with where certain firearms are manufactured, correct?

A. Some.

Q. You know that Sig Sauer has a plant in New Hampshire, correct?

A. I do.

Q. You know that the 1911 is a Sig Sauer model, correct?

A. Correct.

Q. And you know that the rifle that we've been discussing is a Sig Sauer model also, correct?

A. Correct.

Q. And you also know that it's illegal for somebody who has been convicted of a crime punishable by more than a year to punish a firearm (sic) that has affected interstate commerce, correct?

A. To possess, you said?

1 Q. To possess a firearm that has had some effect
2 on interstate commerce; is that correct?

3 A. Correct, yup.

4 Q. But if a firearm had no effect on interstate
5 commerce, it would not be illegal for a felon to possess
6 that firearm, correct?

7 A. I'm not sure of that. I'm not an attorney and
8 I don't -- I don't prosecute cases. I investigate them.

9 Q. So I just want to make clear when you said
10 that it would be illegal for somebody who had been
11 convicted of a felony to possess any firearms, you're
12 not sure whether that's a categorically true statement
13 or not?

14 A. I understand the law to the degree that a
15 convicted felon cannot be in possession of firearms by
16 federal law.

17 Q. And those firearms, again, you agree, are the
18 ones that affect interstate commerce, correct?

19 A. I believe that that is an element of the
20 statute.

21 Q. All right.

22 A. I'm not an expert on the statute by any means.

23 Q. Now, you also have some familiarity with
24 serial numbers on firearms, correct?

25 A. Correct.

1 Q. And you know that in your capacity both as a
2 firearms enthusiast and as a law enforcement officer,
3 correct?

4 A. I know what?

5 Q. You're familiar with the serial numbers, both
6 in the context of your work as a law enforcement
7 officer, but also in your spare time as an enthusiast,
8 correct?

9 A. Yes, I'm familiar with serial numbers in
10 general.

11 Q. And that's in part because you own firearms
12 that have serial numbers, correct?

13 A. True, in part.

14 Q. And you also have access to firearms in your
15 work and those have serial numbers, correct?

16 A. Correct.

17 Q. And also I assume -- I shouldn't assume.

18 Do you investigate crimes that do not involve
19 firearms as well?

20 A. Absolutely.

21 Q. Drug crimes, for instance?

22 A. I have in the past.

23 Q. And sometimes when you're investigating those
24 kinds of crimes, firearms get seized along with the
25 drugs or something like that, correct?

1 A. Correct.

2 Q. And often in those kinds of cases, you see
3 that the markings on the firearm, the serial number, has
4 been obliterated, correct?

5 A. I know it to happen on occasion.

6 Q. Criminals sometimes obliterate the serial
7 numbers to hide who owns that weapon, correct?

8 A. I've known it to be the case.

9 Q. And to make it difficult to trace the weapon,
10 correct?

11 A. Correct.

12 Q. In this case, neither the 1911 nor the pistol,
13 right, nor the rifle, neither one of those have the
14 serial numbers obliterated in any way, correct?

15 A. No.

16 Q. They're completely intact.

17 A. Yeah. Yeah, I'd say so.

18 Q. And as a result of that, you were able to at
19 the appropriate time, run traces on those firearms,
20 correct?

21 A. Correct.

22 Q. Now, I just want to return to your
23 conversation with Roscoe Whitney.

24 As part of returning those firearms to Roscoe
25 Whitney, there was a receipt that was signed by both

1 parties, correct?

2 A. Correct.

3 Q. But there was also some kind of an agreement
4 that you signed with him; isn't that so?

5 A. There was.

6 Q. And in that agreement it indicated that that
7 P226 firearm was, indeed -- belonged to Stephanie Irish,
8 correct?

9 A. I'd have to look at that document to verify
10 that, sir.

11 MR. FALKNER: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, you may.

14 Q. Sir, I've placed what has been marked as
15 Exhibit 2 for ID in front of you. Do you recognize that
16 to be the document that you and Roscoe Whitney signed?

17 A. One of them, yes.

18 Q. That's the agreement, right?

19 A. This -- this is the agreement.

20 Q. And your signature is on that agreement,
21 correct?

22 A. It is.

23 Q. And specifically going to paragraph 3, you
24 identified the 226 pistol as previously belonging to
25 Stephanie Irish, correct?

1 A. That's the way it reads, yes. It says
2 Stephanie Taylor. She was Stephanie Taylor, I believe,
3 at the time.

4 Q. It specifically says Stephanie Taylor, now
5 Stephanie Irish?

6 A. Now Irish. Yeah, correct. You're right. I
7 stand to be corrected. She was previously Stephanie
8 Taylor.

9 Q. And you understand her to be Johnathon Irish's
10 wife, correct?

11 A. I do. I do.

12 MR. FALKNER: And may I have a moment, your
13 Honor?

14 THE COURT: Yes.

15 Q. Now, on October 31st of 2019, that's when you
16 received a call from Johnathon Irish; is that right?

17 A. Correct.

18 Q. And do you know that to be six days after his
19 wife left him?

20 A. No, I don't.

21 Q. But in the call, you just -- did you speak
22 with him personally or did you just receive a voicemail?

23 A. No, personally.

24 Q. And essentially he complained that Stephanie
25 Irish and Donnie Trent were out to get him, right?

1 A. He'd mentioned both names and he described
2 like a plot against him by -- by those two parties.

3 Q. He was concerned that those two parties were
4 in some kind of plot to get him in some way, correct?

5 A. Correct.

6 Q. And at that point you ended the conversation,
7 right?

8 A. I wouldn't say -- I mean, there was other
9 conversation besides what you described.

10 Q. Let me put it another way. You didn't intend
11 to investigate that information, correct?

12 A. I didn't intend to receive it and, no -- and I
13 had no intention to investigate it. I passed it on.

14 Q. And the persons to whom you passed it on were
15 Agent Tongbua, correct?

16 A. I'm sure he eventually saw it, yes.

17 Q. Well, to whom did you pass the information?

18 A. It doesn't go directly to a person. It goes
19 to a file. So I documented the conversation. It went
20 to a file. So I can't say that I handed it to Agent
21 Tongbua or someone else.

22 Q. Did you have any conversations about -- strike
23 that.

24 Did you speak with Agent Tongbua or Agent
25 LeBlanc about your conversation with Johnathon Irish?

1 A. I'm sure I brought it to one of their
2 attention. I don't have any direct recollection to that
3 conversation.

4 Q. Okay.

5 A. But I would have brought it to one of their
6 attention.

7 Q. And that's because you knew those parties to
8 be investigating Johnathon Irish, correct?

9 A. At that point, yes.

10 Q. And did you know that because those parties
11 had told you?

12 A. I'm sure there was some conversation. I had
13 some knowledge of the -- the ongoing investigation. I
14 don't remember conversations with either one of them,
15 specific conversations.

16 Q. Okay. But it wasn't you who returned the call
17 to Mr. Irish?

18 A. No, I definitely did not return a call to
19 Mr. Irish.

20 MR. FALKNER: Just one more moment, your
21 Honor.

22 THE COURT: Sure.

23 MR. FALKNER: I have nothing further, your
24 Honor.

25 THE COURT: Attorney Krasinski.

REDIRECT EXAMINATION

BY MS. KRASINSKI:

Q. Agent Christiana, Attorney Falkner sort of vaguely referenced a plot that the defendant called you about involving his wife and Donnie Trent.

What was this plot that he was reporting?

A. Mr. Irish described it as a murder for hire.

Q. So I just want to be clear. When he was reporting to you a plot to do him harm, he did not say, she's trying to frame me holding her guns, right?

A. No, absolutely not.

Q. He said something more like she's -- it's a murder for hire; is that what you said?

A. Yeah, exactly. He said he -- he described that both Mrs. -- Mrs. Irish and the other party were plotting to potentially kill him, but he used the specific murder for hire term, phrase.

Q. He did not call to report that anyone was trying to set him up with guns?

A. No.

Q. He didn't mention that at all?

A. No.

Q. He thought his wife was trying to hire someone to kill him?

A. Potentially, yeah.

1 Q. Now, just briefly, you testified that
2 sometimes criminals will obliterate serial numbers to
3 hide ownership?

4 A. Uh-huh.

5 Q. Does that happen in all cases?

6 A. Absolutely not.

7 Q. So are there times where firearms are
8 recovered involved in crimes where the serial number is
9 fully intact?

10 A. I think it's more common that they're intact
11 than they're destroyed.

12 MS. KRASINSKI: I have no further questions,
13 your Honor.

14 THE COURT: Anything further, Attorney
15 Falkner?

16 MR. FALKNER: No, your Honor.

17 THE COURT: All right. Agent Christiana, you
18 may step down. Thank you, sir.

19 THE WITNESS: Thank you, your Honor.

20 (Witness excused.)

21 THE COURT: The government may call its next
22 witness.

23 MS. WEILAND: The United States calls Task
24 Force Officer Kevin LeBlanc.

25 THE CLERK: Officer LeBlanc, please remain

1 standing and raise your right hand.

2 **KEVIN LEBLANC**, having been first duly sworn,
3 testified as follows:

4 THE CLERK: Thank you. Please state your full
5 name and spell your last name for the record.

6 THE WITNESS: It's Kevin LeBlanc,
7 L-e-B-l-a-n-c.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. WEILAND:

11 Q. Good morning, Officer LeBlanc.

12 A. Good morning.

13 Q. How are you employed?

14 A. I'm employed with New Hampshire State Police.

15 Q. And what is your current assignment?

16 A. I'm assigned as a task force officer for the
17 FBI's Joint Terrorism Task Force.

18 Q. How long have you been assigned to that task
19 force?

20 A. For two and a half years.

21 Q. And how long have you been with the state
22 police?

23 A. Since 2007.

24 Q. Prior to working for the New Hampshire State
25 Police, what did you do?

1 A. My career began in 1998 with the Baltimore
2 City Police Department and then in 2003, I moved to
3 New Hampshire and got a job with the Concord,
4 New Hampshire, Police Department and then employed with
5 New Hampshire State Police in 2007.

6 Q. Could you describe generally your law
7 enforcement training?

8 A. Sure. Back in the 1998 time frame, I went to
9 a 24-week police academy for Baltimore City Police,
10 became certified as a police officer in the state of
11 Maryland.

12 Then in 2003, when I moved here, I went
13 through what's called a law package through the
14 New Hampshire Police Academy, where I got certified as a
15 New Hampshire police officer.

16 And then as part of my training with the task
17 force of the FBI, I went to a week-long school down in
18 Quantico, Virginia.

19 Q. All right. Are you familiar with Johnathon
20 Irish?

21 A. I am.

22 Q. In December of 2018, did the FBI open an
23 investigation related to Mr. Irish?

24 A. Yes.

25 Q. What was the general nature of the

1 investigation?

2 A. We received information that he was in
3 possession of firearms.

4 Q. So is it fair to say then that it was a
5 firearms investigation?

6 A. Yes.

7 Q. In the early stages of the investigation, what
8 did you do as part of your role in the investigation?

9 A. I assisted doing interviews.

10 Q. Okay. Who did you interview early on in the
11 investigation?

12 A. Elizabeth Millett, who's the mother-in-law of
13 Johnathon Irish.

14 Q. Approximately when did you interview
15 Mrs. Millett?

16 A. That was in late January of 2019, early
17 February 2019 time frame.

18 Q. Okay. You said -- okay. Did she have any
19 information that was relevant to your investigation?

20 A. Yes.

21 Q. Was it information that was actionable at that
22 point?

23 A. No, it was not.

24 Q. Did you -- did the FBI discuss with
25 Mrs. Millett the possibility of enlisting her to work

1 as a confidential human source?

2 A. Yes, we did.

3 Q. What is a confidential human source?

4 A. It's someone who we attempt to keep
5 confidential to assist law enforcement in obtaining
6 information for us that we think would be beneficial or
7 help us gather information for the case.

8 Q. And are there certain ground rules that apply
9 to people who are enlisted to assist the FBI in this
10 capacity?

11 A. Yes.

12 Q. Could you go over what some of those general
13 ground rules are?

14 A. Well, they're told that first and foremost,
15 any information they get and provide us must be truthful
16 and accurate. They're advised that they're not law
17 enforcement officers, that they can't act on their own,
18 that any actions that they do as their role as the
19 informant must be done through us, through -- by
20 instruction through us only.

21 Q. And were those ground rules reviewed with
22 Mrs. Millett?

23 A. They were.

24 Q. Generally speaking, what are some of the
25 reasons why people might agree to act in this capacity

1 on behalf of law enforcement?

2 MR. FALKNER: Objection.

3 THE COURT: Sustained.

4 Q. To the best of your knowledge, did Elizabeth
5 Millett have any criminal charges pending at the time
6 that she agreed to sign up as a confidential human
7 source?

8 A. She did not.

9 Q. Was she the target of a criminal
10 investigation?

11 A. No, she was not.

12 Q. Did Mrs. Millett receive any financial
13 compensation for her assistance?

14 A. She did not.

15 Q. Did she ever request any?

16 A. She did not.

17 Q. Did she agree to serve as a confidential human
18 source?

19 A. Yes, she did.

20 Q. And after that point, did she check in with
21 you periodically?

22 A. She did.

23 Q. Was any of the information that she provided
24 to you during that time actionable?

25 A. It was not.

1 Q. Okay. Anything else that was happening in
2 terms of your investigation in those early stages,
3 December, January of 2019?

4 A. Nothing significant, no.

5 Q. Is it fair to say that the case sort of went
6 stale for a time?

7 A. Yes.

8 Q. Did there come a point when that changed?

9 A. Yes.

10 Q. When was that?

11 A. October 25th, 2019.

12 Q. What happened on that day?

13 A. On that late afternoon, I received information
14 that Stephanie Irish, the wife of Johnathon, had left
15 him.

16 Q. And did that sort of invigorate the
17 investigation?

18 A. It did.

19 Q. During the days and week or so that followed
20 that event, did you interview some additional witnesses?

21 A. I did.

22 Q. Who did you interview during that time?

23 A. Initially during that time, I interviewed
24 Peter Duguay, David Marcotte, and Dylan Roosa.

25 Q. Who was Peter Duguay?

1 A. Peter Duguay is someone that lived up the
2 street from Johnathon. And he owns his own HVAC
3 business, I believe, and he would employ Johnathon as a
4 temporary worker.

5 Q. And you mentioned David Marcotte. Who is
6 that?

7 A. My understanding is he's a friend or
8 acquaintance of the Irishes.

9 Q. And Dylan Roosa, who was he?

10 A. The same, a friend, acquaintance of the
11 Irishes.

12 Q. All right. Were they able to provide any
13 information that was relevant to your investigation?

14 A. They were.

15 Q. Now, with regard to Dylan Roosa, did you also
16 discuss with him the possibility of serving as a
17 confidential human source?

18 A. I did.

19 Q. And you mentioned already some ground rules
20 that are generally applicable to people working in that
21 capacity. Were those ground rules reviewed with
22 Mr. Roosa as well?

23 A. They were.

24 Q. Did Dylan have any pending criminal charges
25 against him at this time?

1 MR. FALKNER: Objection.

2 MS. WEILAND: May we approach, your Honor?

3 THE COURT: Yes.

4 AT SIDEBAR

5 MR. FALKNER: Your Honor, I didn't object
6 vis-a-vis Ms. Millett, but this is like a reverse 609
7 situation. How can the government basically be
8 bolstering their credibility of a witness by -- by
9 indicating that they don't have criminal charges? I
10 wouldn't be entitled to impeach him if he did have
11 criminal charges.

12 THE COURT: I think what she's getting at is
13 the question that you objected to and I sustained, which
14 would be what are all kinds of different reasons that a
15 witness would engage in this.

16 MR. FALKNER: Right.

17 THE COURT: And one of them would be because
18 there are charges. And so I think that that is
19 essentially removing that from the jury's consideration
20 and she's going to move to the next question, so I'm
21 not --

22 MR. FALKNER: But they haven't been told that
23 that would be a reason.

24 MS. KRASINSKI: But the Court is going to
25 instruct them that that could be a reason.

1 THE COURT: Yeah. I'm going to overrule the
2 objection.

3 MR. FALKNER: Okay.

4 CONCLUSION OF SIDEBAR

5 THE COURT: Go ahead, Attorney Weiland.

6 MS. WEILAND: Thank you, your Honor.

7 Q. Officer LeBlanc, did Dylan Roosa have any
8 pending criminal charges at the time he agreed to serve
9 as a confidential human source?

10 A. None that I'm aware of.

11 Q. Was he a target of an investigation, a
12 criminal investigation?

13 A. No, he was not.

14 Q. Did he receive any benefit in exchange for his
15 assistance?

16 A. Yes.

17 Q. What was that?

18 A. We paid him \$250.

19 Q. Was that at his request?

20 A. No.

21 Q. Did he condition his willingness to assist the
22 FBI on the receipt of any money?

23 A. He did not.

24 Q. Has he been offered anything by the FBI in
25 exchange for any expected testimony?

1 A. He has not.

2 Q. How many times did the FBI interview Mr. Roosa
3 in connection with the investigation into Mr. Irish?

4 A. I believe it was two times.

5 Q. And how many of those interviews -- did any of
6 those interviews take place before he was enlisted as a
7 confidential source?

8 A. Yes.

9 Q. How many?

10 A. One time.

11 Q. Do you recall approximately at what point he
12 was signed up as a source?

13 A. I believe that the first interview would have
14 occurred approximately within one week or so of that
15 October 25th time frame. Then after that interview, I
16 believe I reapproached him a week or two later, in that
17 time frame.

18 Q. Now, as your investigation advanced, did there
19 come a point where you had reason to believe that
20 Mr. Irish no longer had physical custody of the
21 firearms?

22 A. Yes.

23 Q. Did you ultimately get a lead as to where the
24 firearms might be?

25 A. I did.

1 Q. Where did that lead take you?

2 A. To Gerald Roy's house.

3 Q. Is Gerald Roy also referred to as Gary Roy?

4 A. He is.

5 Q. When did you learn about Mr. Roy?

6 A. I'm sorry?

7 Q. When did you learn about Mr. Roy?

8 A. When? It was the week of Thanksgiving.

9 Q. And that would be in November of 2019?

10 A. 2019, yes.

11 Q. Did you go to his home?

12 A. I did.

13 Q. Where does he live?

14 A. In Exeter, New Hampshire.

15 Q. Do you recall when you visited his home?

16 A. It would be the Wednesday before Thanksgiving.

17 Q. Tell the jury about that visit, please.

18 A. During that visit we -- we knocked on his
19 door, we spoke to him and told him why we were there.
20 He agreed to speak to us and we asked him about the
21 firearms.

22 Q. Did you confirm that Mr. Roy was in
23 possession of some firearms?

24 A. We did.

25 Q. And what happened next?

1 A. After discussing with him the firearms and how
2 he got them, we asked to -- if we could see the
3 firearms.

4 Q. Did he show them to you?

5 A. He did.

6 Q. Where were you in Mr. Roy's home when this
7 occurred?

8 A. We were sitting in the kitchen, at the kitchen
9 table.

10 Q. Were you alone or was somebody with you?

11 A. Special Agent Tongbua was with me.

12 Q. And did Mr. Roy retrieve the firearms?

13 A. Yes, he had to go up to his attic to get them.

14 Q. And did he retrieve them by himself?

15 A. No. He said, they're up on the third floor,
16 so he had to ask his father for help to carry everything
17 down.

18 Q. And did he bring them to the kitchen?

19 A. Yes, he went out of my sight up to the attic
20 to get them, he indicated, and then I could hear him
21 carrying a large -- I could hear this thumping noise as
22 he brought down a box to the kitchen, as he came down.

23 Q. You said that he brought a box. Can you
24 describe the box?

25 A. It's a plastic crate. It's -- looks like a --

1 like a foot locker, but it's plastic with a lid that
2 flips open, maybe three feet wide -- two and a half feet
3 tall, two feet wide, like a big giant foot locker with a
4 lid that opens and closes that can be locked with a
5 padlock.

6 MS. WEILAND: May I approach, your Honor?

7 THE COURT: Yes.

8 Q. Officer LeBlanc, I've placed in front of the
9 witness stand what's been previously admitted as
10 Government's Exhibit 33. Do you recognize that
11 container?

12 A. That is the black box that Gary Royo had to
13 carry down from his attic.

14 Q. Okay. While you were there with Mr. Royo,
15 did -- well, you mentioned, first of all, that the box
16 was locked.

17 Directing your attention to the front of this
18 box, do you see a lock on it today?

19 A. I do.

20 Q. And is that the same lock that was on it when
21 Mr. Royo retrieved it from the attic?

22 A. Yes.

23 Q. Was the lock opened or closed?

24 A. It was locked and Mr. Royo unlocked it with a
25 key.

1 Q. Okay. Did you examine the contents?

2 A. I did.

3 Q. Just generally speaking, what was inside?

4 A. I saw a BB gun, an AR-style rifle, a shotgun,
5 a handgun, various moving blankets were in there with
6 firearms wrapped in them, a tactical vest, a gas mask,
7 holster, various canned -- metal cans that held ammo,
8 various ammunition, gun magazines.

9 Q. I'm going to move this off to the side
10 momentarily.

11 I'm approaching you now with Government's
12 Exhibit 5. Do you recognize that firearm?

13 A. Yes. This is the -- one of the firearms that
14 was in that black box.

15 Q. Okay. And approaching you now with
16 Government's Exhibit 6 and 6A, do you recognize this
17 firearm?

18 A. Yes, this would be the rifle that was inside
19 the firearm (sic) and this bag with the ammunition for
20 it was found inside this sort of compartment here at the
21 butt stock.

22 Q. Okay. And just to be clear, that
23 ammunition -- was the firearm loaded, to the best of
24 your recollection?

25 A. No, it was not.

1 Q. Okay. So that compartment that you're
2 referring to on the butt stock there, is that simply a
3 storage compartment?

4 A. So the door flips open, there's a hollowed-out
5 area, and these were found inside there.

6 Q. And I'm going to approach now with
7 Government's Exhibit 7 and 7A. Do you recognize these
8 items?

9 A. Yes.

10 Q. And what are they?

11 A. So this is a Catamount Fury semiautomatic
12 shotgun that was found inside that box and this --

13 Q. Okay. And I notice that there are two
14 components there. Is that the way it looked when you
15 opened the box and retrieved those items?

16 A. We found them as separate, but it should
17 go together as one component to make a long shotgun
18 that's --

19 Q. Okay. So that -- this component there, the
20 shorter component, that is --

21 A. The butt stock.

22 Q. -- the butt stock.

23 Okay. Now, you mentioned that there were some
24 other items in addition to the firearms inside the box;
25 is that correct?

1 A. Yes.

2 MS. WEILAND: Your Honor, just for ease of
3 reference, would it be all right if I just handed this
4 box to Officer LeBlanc?

5 THE COURT: I think so. Do you have any
6 problem --

7 MR. FALKNER: No objection.

8 THE COURT: All right.

9 Q. Officer LeBlanc, I'm handing you a box
10 containing some items.

11 Now, just to be clear, this cardboard box, was
12 it inside this black container when you opened it at
13 Gary Roy's house?

14 A. This cardboard box was not --

15 Q. Okay.

16 A. -- but the contents --

17 Q. If you wouldn't mind looking inside, and if
18 you wouldn't mind just sort of briefly going through the
19 contents of that box.

20 A. There are several 30 aught magazines for the
21 AR-style rifle. Do you need me to show them all.

22 Q. Let's just move this out of the way.

23 Do you know -- if you wouldn't mind, just for
24 the sake of the jury, I don't think it's necessary for
25 you to display each one, but how many similar magazines

1 are there inside?

2 A. I believe there are about seven.

3 Q. Okay. Now, just in regard to -- I'm
4 displaying Government's Exhibit 13. Can you describe
5 specifically what this item is?

6 A. That's a 30-round magazine, meaning it holds
7 30 rounds of 5.56 ammunition that would fit the AR-style
8 rifle.

9 Q. Okay. And how many of these magazines were in
10 that box?

11 A. I'd have to go through and count them again.
12 There are eight right here.

13 Q. Okay.

14 A. Some loaded, some unloaded.

15 Q. You said some of those magazines were loaded?

16 A. Yes.

17 Q. And each one has a 30-round capacity?

18 A. Yes.

19 Q. All right. And just so we are clear, these
20 are -- Government's Exhibits 10 through 16 are the
21 extended round magazines; is that correct?

22 A. Yes.

23 Q. Okay. Was there also a standard capacity
24 magazine for that 5.56 caliber rifle?

25 A. There's this one here that goes to that same

1 rifle.

2 Q. Okay. And that's Government's Exhibit 17?

3 A. Yes.

4 Q. Okay. You're holding some other items in your
5 hand there. Could you please explain what those are?

6 A. These are loaded magazines that go to the
7 1911, .45 handgun. It looks like these are eight-round
8 capacities.

9 Q. Okay. And those are -- Government's Exhibits
10 19 through 24 are loaded; is that correct?

11 A. Yes.

12 Q. And they are loaded with .45 caliber
13 ammunition?

14 A. Yes.

15 Q. And that is the type of ammunition that would
16 go with that 1911 Sig Sauer pistol, is that correct?

17 A. Correct.

18 Q. Okay. And then is there also one unloaded .45
19 caliber magazine?

20 A. Yes.

21 Q. All right. And that would be Government's
22 Exhibit 25. Any additional --

23 A. Yes.

24 Q. -- items in that box that we have not talked
25 about?

1 A. Bags of ammunition. There's .45 rounds here,
2 .45 caliber rounds.

3 Q. Okay. And for the record, that is
4 Government's Exhibit 8?

5 A. Yes. And this bag here is a bag of -- it's
6 blank ammunition, it looks like, for the 5.56 rifle.

7 MS. WEILAND: Okay. And also, for the record,
8 that is Government's Exhibit 26.

9 Q. To be clear, this bag of ammunition, that
10 Government's Exhibit 8, that was .45 caliber rounds?

11 A. Yes.

12 Q. Okay. Does that complete the items that are
13 in that cardboard box?

14 A. Yes, the magazine -- yup.

15 Q. Okay. Were there some additional items in
16 that black case at Mr. Roy's house?

17 A. Yes.

18 Q. Showing you what's been marked as Government's
19 Exhibit 18, do you recognize this?

20 A. Yes. That is a holster for the 1911 pistol.

21 Q. Okay. Is this how it looked when you actually
22 saw it in the case when it was first opened?

23 A. No, the pistol was inside of it.

24 Q. Okay. And handing you now Government's
25 Exhibit 27.

1 A. This is one of the ammo containers that we
2 found inside the black box and inside of it are the
3 loaded 30-round magazines for the 5.56 rifle.

4 Q. So the black case there -- I'm sorry, the
5 green case, this was inside that black box?

6 A. Yes.

7 Q. And this is Government's Exhibit 27?

8 A. Yes. So there are --

9 Q. And that contains additional extended
10 magazines for the --

11 A. Four extended magazines and a bag of 5.56
12 ammunition. These ones are not blanks. These are all
13 live ammunition.

14 Q. Okay. And then, finally, approaching you with
15 Government's Exhibit 9, do you recognize this?

16 A. Yes. It's a black case, I guess a
17 Pelican-style case, and inside was magazines for the
18 automatic shotgun. A semiautomatic shotgun, sorry.

19 Q. Okay. So that case is Government's Exhibit 9.
20 How many magazines are inside?

21 A. Five.

22 Q. So that is Government's Exhibits 9A through E.
23 Were any of these loaded?

24 A. They were not.

25 Q. And what is the capacity of these magazines?

1 A. I believe -- I'm not a hundred percent sure.
2 Eight or ten.

3 Q. Would this be considered a standard capacity?

4 A. I believe so.

5 Q. Okay. Now, when you were there at Mr. Roy's
6 house examining the contents of this case, did you
7 document what you were seeing as that case was unpacked?

8 A. Yes, photographs were taken.

9 MS. WEILAND: Okay. And if we could -- just a
10 moment.

11 If we could pull up, Ms. Sheff, Government's
12 Exhibit 28.

13 MS. SHEFF: 28A.

14 MS. WEILAND: 28A, that's fine.

15 Okay.

16 Q. Showing you now Government's Exhibit 28A --
17 and, Ms. Sheff, if you wouldn't mind just sort of
18 briefly scrolling through the remaining exhibits in this
19 28 series.

20 Officer LeBlanc, do these appear to be the
21 photographs that you took at Mr. Roy's house during
22 your visit there the Wednesday before Thanksgiving?

23 A. Yes.

24 Q. And is this how the items appeared in that
25 black case as you unpacked it?

1 A. Yes.

2 Q. Are these some other items that were actually
3 found inside that black case?

4 A. Yes, but we did not take those.

5 Q. Can you describe what they are?

6 A. There's a little bit of a glare there.

7 That's like a protective suit in that bag that
8 you'd wear, personal protection equipment, I believe is
9 what the PPE stands for, like a biohazard-type suit.
10 And there was like a camouflage tactical vest you would
11 wear.

12 Q. And, finally, I'm just going to approach and
13 hand you Government's Exhibit 35. And these are 35A
14 through K.

15 Just very briefly, are these photographs of
16 the same physical items that we've just reviewed that
17 are at Government's Exhibit 5 through 27?

18 If I misspoke, I apologize. Those were
19 Exhibits 35A through 35K; is that correct?

20 A. Yes.

21 Q. And those are just photographs of the physical
22 exhibits in this case; is that accurate?

23 A. Yes.

24 Q. And is that just because those physical
25 exhibits cannot go back to the jury room?

1 A. Correct.

2 Q. All right. Now, while you were at Mr. Roy's
3 house, did you ask him for permission to review the
4 contents of his cell phone?

5 A. I did, yes.

6 Q. Did he agree?

7 A. He did.

8 Q. In reviewing the contents of his cell phone,
9 did you observe anything that you believed was relevant
10 to your investigation?

11 A. Yes.

12 Q. Did that include phone calls and text
13 messages?

14 A. It did.

15 Q. And did you document any of those
16 communications?

17 A. Yes, we took a few pictures of his phone that
18 day.

19 Q. Did -- was there any discussion with Mr. Roy's
20 about attempting a full extraction of his cell phone at
21 a later time?

22 A. Yes, there was.

23 Q. And was that physical extraction completed?

24 A. No. So we followed up with him and again with
25 his permission we asked if we could -- I think it's

1 called a Cellebrite device, where you can connect to his
2 phone to extract the messages we wanted to retain. And
3 we attempted to do that, but it's a -- his phone is
4 very -- older phone, almost like a flip phone
5 technology, so we were unable to extract it.

6 Q. Did you document the contents of the phone in
7 some other way?

8 A. Yes, so the backup plan was I physically went
9 through each of his messages and took pictures of them.

10 Q. When you say you went through each of his
11 messages, I just want to make sure that I understand.

12 You did not take photographs of the full
13 contents of his cell phone; is that correct?

14 A. Correct, just the ones that were believed to
15 be relevant to the case.

16 Q. Did that include some communications with a
17 number that you knew to be associated with Mr. Irish?

18 A. Yes.

19 Q. Did that also include some communications with
20 other individuals?

21 A. It did.

22 Q. And as you were reviewing the contents of his
23 phone and photographing the contents of his phone, did
24 you alter the contents in any way?

25 A. I did not.

1 Q. Did you modify any of those messages or phone
2 logs?

3 A. No.

4 MS. WEILAND: If I could approach, your Honor.

5 THE COURT: Yes.

6 Q. Officer LeBlanc, I'm handing you now what's
7 been marked for identification as Government's
8 Exhibit 29A -- pardon me just a moment -- 29A, B, C, D,
9 E, and F for identification. If you wouldn't mind just
10 reviewing those momentarily.

11 Do you recognize those photographs?

12 A. Yes, these are the pictures that I took of
13 Gary's phone.

14 Q. And do those pictures fairly and accurately
15 depict the content that you reviewed on Mr. Roy's phone
16 on November 27th, 2019?

17 A. Yes, they do.

18 Q. Now, after your interview with Mr. Roy, did
19 you identify any additional witnesses who might have
20 information that was pertinent to your investigation?

21 A. We did.

22 Q. And who was that?

23 A. A subject by the of name of Neil.

24 Q. All right. Were you able to eventually
25 determine Neil's identity?

1 A. Yes, we were able to identify him as Neil
2 Prive.

3 Q. And who is Neil Prive?

4 A. My understanding is he's the cousin of
5 Johnathon Irish.

6 Q. All right. Did you interview him right away?

7 A. I did not, no.

8 Q. Why not?

9 A. At that time we wanted to --

10 MR. FALKNER: Objection.

11 THE COURT: I'm sorry?

12 MR. FALKNER: I objected, your Honor, to the
13 question. The question was why not and I objected.

14 THE COURT: Overruled. Go ahead.

15 Q. Is there a reason you did not interview him
16 right away?

17 A. Yes. We wanted to protect the integrity of
18 the case, so we held off interviewing him.

19 Q. What do you mean by protecting the integrity
20 of the case?

21 A. Well, believing what his relationship with
22 Johnathon Irish, we didn't know where his loyalties
23 would stand, so by interviewing him, information could
24 have gotten back to Johnathon that we were conducting
25 these interviews.

1 Q. Okay. Did you eventually interview Mr. Prive?

2 A. I did.

3 Q. When was that?

4 A. After Johnathon got arrested.

5 Q. Okay. When was Johnathon arrested?

6 A. I believe it was December 20th of 2019.

7 Q. Okay. Were there any additional witnesses
8 that you interviewed after the defendant's arrest?

9 A. Yes.

10 Q. Who was that?

11 A. Mr. Roscoe Whitney.

12 Q. When did you first interview Mr. Whitney?

13 A. On the -- same thing. We waited until after
14 the arrest to protect the integrity of the case and then
15 I interviewed him the same day, but after -- the same
16 day of the arrest, but after Johnathon was in custody.

17 Q. Okay. How many times did you interview
18 Mr. Whitney in total?

19 A. Two times.

20 Q. And in your first interview with him, did he
21 provide you some information related to the firearms
22 that you had reason to believe was incorrect?

23 A. Yes.

24 MR. FALKNER: Objection.

25 THE COURT: Okay. Did you object? I didn't

1 hear --

2 MR. FALKNER: Yeah. Objection, your Honor.
3 The question was did he have information that he had
4 reason to believe was incorrect that he had received
5 from Roscoe Whitney.

6 THE COURT: Overruled.

7 Q. Just following up, did Mr. Whitney provide
8 some information about those firearms that you had
9 reason to believe was incorrect?

10 A. Yes.

11 Q. In subsequent interviews, did any of the
12 information he provided about the firearms change?

13 A. Yes.

14 Q. Now, after Mr. Irish's arrest and apart from
15 your interviews with Mr. Prive and Mr. Whitney, did you
16 have any additional role in the investigation?

17 A. Yes.

18 Q. And what was that?

19 A. I monitored jail phone calls placed by
20 Johnathon Irish from the Merrimack County Jail.

21 Q. Okay. Are all telephone calls made by inmates
22 in the jail recorded?

23 A. The outgoing phone calls, yes.

24 Q. Okay.

25 MR. FALKNER: Your Honor, may we approach

1 sidebar?

2 THE COURT: Yes.

3 AT SIDEBAR

4 MR. FALKNER: Your Honor, there's now
5 testimony that there were jail calls made and I just
6 want some kind of instruction to the jury that the fact
7 that he was in jail doesn't have any indication as to
8 whether he's guilty or not guilty of these crimes.

9 THE COURT: Okay. And you're going to
10 elicit -- are you eliciting the call at this point? I'm
11 sorry.

12 MS. WEILAND: We will be -- yes, we will be
13 moving to admit the call through Officer LeBlanc. We
14 will not be publishing it at this time.

15 THE COURT: Okay. All right. So that you can
16 absolutely have an opportunity also to look at the
17 transcript, perhaps at lunch.

18 MR. FALKNER: Yeah, I'd object to its
19 admission. If your Honor is going to admit it, I would
20 just ask that it be de bene or something to that -- de
21 bene so that I can object in the context of the evidence
22 when it actually comes in.

23 THE COURT: So you can approach sidebar. Is
24 that what you're asking?

25 MR. FALKNER: Yeah. In other words, I'm

1 asking -- I'm objecting to its admission now under the
2 state of the evidence as it exists. And I may have
3 additional evidence later -- additional objections -- if
4 it were to be introduced under a different state of the
5 evidence, but I would -- I'm objecting under the state
6 of the evidence now to its admission in addition to --

7 MS. WEILAND: We haven't offered it yet.

8 MR. FALKNER: I understand, but I'm just
9 raising it with your Honor at sidebar if --

10 THE COURT: I will never prohibit you from
11 approaching sidebar. Sometimes I can't hear and it
12 almost sounds to me like you were going to object, but
13 then sat down. So I apologize.

14 MR. FALKNER: I'm sorry. I'll try to speak
15 louder when I do.

16 THE COURT: Okay. That's all right. So you
17 simply now want to have an instruction that the jury's
18 heard testimony that he's in jail and that there may be
19 calls and you may not in any way use the fact that he
20 was in jail to find that he was guilty.

21 MR. FALKNER: Right. I mean, it's the same
22 concern, your Honor, as if he weren't in a suit and were
23 brought in wearing an orange jumpsuit. You know, the
24 jury is basically being exposed to evidence that he was
25 in jail pending this case and up until today, I wasn't

1 aware that there was going to be any such evidence, but
2 now because of this tape, there is such evidence, which
3 is why I'm asking for the instruction now.

4 THE COURT: Okay. I just want to make sure I
5 give the instruction you want.

6 The fact that he is in jail, that you've heard
7 evidence of that, you may not use against him and you
8 may not use it in any way to find that he is guilty of
9 the charged crime.

10 MR. FALKNER: Correct.

11 THE COURT: Okay. Everybody okay with that?
12 All right.

13 Anything else, Attorney Weiland?

14 MS. WEILAND: No.

15 THE COURT: I keep saying Weiland. It's
16 Weiland.

17 MS. WEILAND: It's Weiland.

18 THE COURT: I'm so sorry. I'll try to correct
19 that.

20 MS. WEILAND: Okay.

21 CONCLUSION OF SIDEBAR

22 THE COURT: You have heard testimony that
23 Mr. Irish was in jail. You may not use that evidence
24 against Mr. Irish in any way and you may not use it in
25 any way to find that he is guilty of this charge.

1 Go ahead, Attorney Weiland.

2 Q. Officer LeBlanc, are all outgoing telephone
3 calls made by inmates at the jail recorded?

4 A. Yes, they are.

5 Q. And what about jail visits? Are the
6 communications made during jail visits recorded in a
7 similar fashion?

8 A. Yes. The visits occur with the parties and
9 the inmates speaking via a telephone and that
10 conversation is recorded as well.

11 Q. Okay. Are you familiar generally with how the
12 recording system operates?

13 A. I'm familiar with the program that I use to
14 access it in order to monitor the jail calls.

15 Q. Okay. But in terms of an inmate wishing to
16 place an outgoing call, for instance, how is it that
17 certain calls are associated with a particular inmate on
18 that system?

19 A. Each inmate has a unique inmate ID or PIN
20 number that is used when they make the outgoing call, so
21 it registers that phone call with them.

22 Q. And is there anything to prevent inmates from
23 sharing that unique PIN number with other inmates?

24 A. Well, it's a rule they're not supposed to, but
25 it can happen.

1 Q. And does it, in fact, happen from time to
2 time?

3 A. Yes.

4 Q. So, conceivably, it's possible that someone
5 other than the inmate to whom that unique PIN number is
6 assigned could be making a phone call associated with
7 that PIN number?

8 A. Correct.

9 Q. Are there other ways that you can determine
10 whether or not any particular calls or communications
11 that you're monitoring are, in fact, associated with the
12 inmate belonging to that ID?

13 A. Yes. In this case, I -- voice recognition and
14 in the content of the conversation, I'm able to tell who
15 it is.

16 Q. Now, you mentioned voice recognition. Are you
17 familiar with Johnathon Irish's voice?

18 A. Yes.

19 Q. And is that solely through monitoring his
20 communications while he's been in custody?

21 A. No, I've had face-to-face conversations with
22 him before and on the time of his arrest. I've also
23 heard his voice on a recorded call as well.

24 Q. Now, are the recorded calls and communications
25 available for review by law enforcement on some type of

1 platform?

2 A. Yes. So for me to get access to that, I had
3 to contact an administrator at the county jail, have
4 proof of my law enforcement credentials, and through
5 their administrator, I get a unique user name and unique
6 password to log in to the program that's called Securus
7 Technologies.

8 Q. And once you have -- well, first of all, can
9 anybody get access to that database?

10 A. I do not believe so, no.

11 Q. Once you log into the platform, what do you do
12 to retrieve communications associated with a particular
13 inmate?

14 A. Within that program, I search either by the
15 inmate's name or by that unique number assigned to them
16 and then that will give me a list of all the outgoing
17 phone calls or visit calls that have been recorded.

18 Q. Within that system, when -- when that system
19 retrieves the calls that are associated with a
20 particular individual or a particular PIN number, are
21 you able to see within the platform the outgoing numbers
22 that were dialed from within the jail?

23 A. Yes, I see the date and the time and the
24 length of the phone call and then the number dialed of
25 who they called. And then I can also differentiate

1 between that number and whether it's a phone call or a
2 visit recording.

3 Q. Okay. In the course of monitoring Mr. Irish's
4 communications, do you have a rough estimate of how many
5 communications you listened to?

6 A. Many, many hours. I'd estimate at least 60,
7 70, 80 phone calls.

8 Q. All right. Were the majority of those phone
9 calls made to the same individual or individuals?

10 A. Yes.

11 Q. What individuals did Mr. Irish communicate
12 with most frequently?

13 A. I'd say at least 50 percent, if not more, of
14 the time was to his mother Nancy or another gentleman
15 named Don.

16 Q. Okay. And in the course of monitoring those
17 communications, did you also become familiar with the
18 sound of Mr. Irish's mother's voice?

19 A. Very familiar, yes.

20 Q. Okay. Directing your attention to
21 February 8th, 2020, so over this past weekend, did you
22 log in to that database on that date?

23 A. I did.

24 Q. And did it appear to be operating as normal?

25 A. It was.

1 Q. Did you review any recordings associated with
2 Johnathon Irish on that day?

3 A. Yes, I monitored the visit call on Saturday
4 night.

5 Q. Okay.

6 A. This past Saturday night.

7 Q. Did you recognize Mr. Irish's voice on that
8 recording?

9 A. I did.

10 Q. Did you recognize any other voices on that
11 recording?

12 A. I recognized the voice of his mother Nancy and
13 the voice of the gentleman named Don Lane.

14 Q. Okay. And to be clear, was this a -- a phone
15 call?

16 A. It was a -- a visit. Don and Nancy were
17 visiting Johnathon at the jail.

18 Q. And the content of their communication was
19 recorded?

20 A. Yes, they talked via telephone and that
21 conversation's recorded.

22 Q. Okay. Did you download or save that recording
23 in some way?

24 A. Yes. So within that program, any call that's
25 monitored, you can literally just click a box of that

1 individual call and then you click create CD image. And
2 through the program it sends an email or a link to my
3 government email and then that allows me to save it to a
4 CD --

5 Q. Now --

6 A. -- or DVD.

7 Q. -- when you receive that link to download any
8 particular recording, do you have the capability of
9 altering or modifying the content of the communication
10 at all?

11 A. I can't do anything but save it as is.

12 Q. Okay.

13 A. It doesn't allow anything.

14 Q. And did you follow that procedure to save the
15 recording that -- or I'm sorry -- the communication that
16 you reviewed on February 8th of 2020?

17 A. I did.

18 Q. Approaching now with what's been marked for
19 identification as Government's Exhibit 37, do you
20 recognize that disk?

21 A. I do.

22 Q. How do you recognize it?

23 A. Well, my initials are on it. I initialled it.

24 Q. When did you place your initials on that disk?

25 A. This morning, February 10th.

1 Q. Have you reviewed the contents of that disk?

2 A. I did.

3 Q. When?

4 A. This morning, February 10th.

5 Q. Does that disk contain a portion of the
6 recorded visit between Mr. Irish and his mother and
7 Mr. Lane on February 8th, 2020?

8 A. It does.

9 Q. And is that disk a true and accurate copy of
10 that portion of the phone call?

11 A. It is.

12 MS. WEILAND: Your Honor, at this time, I move
13 to strike the ID from Exhibit 37.

14 MR. FALKNER: Objection, your Honor. And may
15 I be heard at sidebar?

16 THE COURT: Yes.

17 AT SIDEBAR

18 MR. FALKNER: Your Honor, at this time I'd
19 simply reiterate the 403 grounds. Certainly it could be
20 redacted so as to exclude the comments about conspiracy.

21 I'd additionally point out -- and it's unusual
22 to raise it at this point -- but I -- I object under the
23 Fourth Amendment to the introduction of this.

24 There's been no testimony as to the -- any
25 penological goal. This agent has testified that it's

1 simply as a law enforcement agent who's unaffiliated
2 with the jail, he just logs in -- it's a nonprivate
3 database, and he just logs in and listens to every phone
4 call of the defendant.

5 As a result of that, because it's nonpublic,
6 there is some privacy interest in it so that Mr. Irish
7 has a privacy -- some privacy interest vis-a-vis law
8 enforcement.

9 There's been no subpoena here, there's been no
10 showing that the agent, other than simple -- simply
11 listening to him, monitoring all communications of the
12 defendant, and this communication's included in that,
13 and as a result of that, I'd object under the Fourth
14 Amendment.

15 And I'd point out that I've had no prior
16 opportunity, because this evidence didn't even come into
17 being until Saturday and I wasn't informed that it would
18 be introduced until yesterday.

19 MS. WEILAND: I think the Fourth Amendment
20 jurisprudence is pretty well settled that inmates in a
21 penal institution have no legitimate expectation of
22 privacy in the content of their communications. And I
23 am happy to elicit testimony that inmates are advised
24 that all of their communications within the jail are
25 subject to monitoring and recording.

1 MR. FALKNER: And I'd stipulate to that and
2 agree to that, that the -- that at the beginning of the
3 call, not the part that's been introduced, it does say
4 that it's being subject to monitoring and recording.
5 But that doesn't mean that it's necessarily available to
6 the FBI as opposed to the persons working at this jail
7 and for the purpose of maintaining the security of the
8 institution.

9 THE COURT: Okay. Overruled, Fourth Amendment
10 objection. There's no legitimate expectation of privacy
11 with respect to these calls.

12 The 403 issue, with respect to a certain basis
13 being redacted, I'm not sure I'm clear on that.

14 MR. FALKNER: So -- so, your Honor, in
15 particular, it's a 30-second clip, approximately.

16 THE COURT: Uh-huh.

17 MR. FALKNER: The specific words that makes it
18 sound as if he's in a conspiracy with his mother, I'd
19 like for that to be redacted. I think that's unfairly
20 prejudicial, even if the rest of the clip would
21 otherwise be admissible.

22 MS. KRASINSKI: As a --

23 THE COURT: I'm going to overrule that
24 objection. I think you can make whatever argument you
25 want to make about those statements, but I'm not finding

1 that the probative value is substantially outweighed by
2 the prejudice on that.

3 Anything else? Do you have any arguments with
4 respect to the foundation?

5 MR. FALKNER: No, your Honor.

6 THE COURT: And you're stipulating, so you
7 have no problem with her asking him are inmates informed
8 of the -- would you rather handle that via a
9 stipulation?

10 MR. FALKNER: I'd rather -- I think that's
11 only relevant to the Fourth Amendment considerations
12 that go before the jury, so I don't think that's
13 testimony that needs to be introduced.

14 THE COURT: And she didn't -- okay. All
15 right.

16 MR. FALKNER: Okay.

17 THE COURT: Okay. Thank you.

18 CONCLUSION OF SIDEBAR

19 THE COURT: Go ahead, Attorney Weiland.

20 MS. WEILAND: Your Honor, at this time we do
21 move to strike the ID on Government's Exhibit 37.

22 THE COURT: All right. Objection noted, but
23 that is a full exhibit.

24 MS. WEILAND: And I would just ask your
25 Honor's permission to publish this through a later

1 witness.

2 THE COURT: I'm sorry?

3 MS. WEILAND: We would ask to publish this
4 through a later witness.

5 THE COURT: All right. Permission granted.
6 (Government's Exhibit 37 admitted.)

7 MS. WEILAND: No further questions, your
8 Honor.

9 THE COURT: All right. Attorney Falkner, go
10 ahead.

11 CROSS-EXAMINATION

12 BY MR. FALKNER:

13 Q. Good morning, Mr. LeBlanc.

14 A. Good morning.

15 Q. How many years have you been working at the
16 FBI?

17 A. About two and a half years, sir.

18 Q. And on this investigation, you were working
19 with Agent Tongbua, correct?

20 A. Yes.

21 Q. And his title is special agent, correct?

22 A. His title?

23 Q. Correct.

24 A. Yes.

25 Q. Fair to say that special agent refers to every

1 agent of the FBI?

2 A. Their title?

3 Q. Their title is just special agent, correct?

4 A. Yes.

5 Q. There's no other kind of agent other than
6 special agent, correct?

7 A. Not that I'm aware of.

8 Q. Now, in this case, in or around January of
9 2019 is when you interviewed Ms. Millett, correct?

10 A. Yes.

11 Q. And that is Johnathon Irish's mother-in-law?

12 A. Yes.

13 Q. And it was at that interview that she was
14 signed up so to speak as a -- as a confidential
15 informant, correct?

16 A. I believe so, yes.

17 Q. And were you involved in preparing the
18 confidential informant paperwork?

19 A. I believe I -- yes. The admonishments and --

20 Q. There's an application that's filled out also,
21 correct?

22 A. Yes.

23 Q. And in that application, among other things,
24 you have to identify potential reasons why that person
25 would be -- want to be an informant, correct?

1 A. Yes.

2 Q. And that was filled out vis-a-vis Elizabeth
3 Millett, correct?

4 A. It was filled out by --

5 Q. That was filled out in the case of Elizabeth
6 Millett, correct?

7 A. Yes, sir.

8 Q. Did you fill that out?

9 A. I don't think I did.

10 Q. Did Agent Tongbua fill that out?

11 A. I believe so.

12 Q. Did you ever review that paperwork?

13 A. Yes.

14 Q. And it's fair to say that there were generally
15 three grounds on which the FBI believed were motivations
16 for her to be signing up as a confidential informant,
17 correct?

18 A. Which three -- are you referring to something
19 on that paperwork?

20 Q. Yes.

21 A. I'd have to see it again, sir. Sorry.

22 Q. Well, for instance, you were able to identify
23 that she had a family motive in the sense that she had
24 some concern for her family and that was a motive why
25 she was signing up as a confidential informant, correct?

1 A. My understanding, her motive was to help us
2 out because she had information.

3 Q. Right. But also it was identified that she
4 was concerned because her daughter and her son-in-law
5 were draining her financially; isn't that so?

6 A. If you -- sir, if you're referring to the
7 paperwork, I'd have to look at it. I have not looked at
8 it recently.

9 Thank you.

10 Q. Is that a portion of the application for
11 Elizabeth Millett to be signed up as a confidential
12 informant, to the best of your knowledge?

13 A. I'm sorry, sir. I was reading this. Can you
14 repeat?

15 Q. Have I shown you a portion of the application
16 for Elizabeth Millett to sign up --

17 A. Yes.

18 Q. -- as a confidential informant?

19 A. Yes.

20 Q. And there's three generalized motives,
21 correct? The first, her family.

22 MS. WEILAND: Your Honor, may we approach?

23 THE COURT: Yes.

24 AT SIDEBAR

25 MS. WEILAND: Your Honor, I'm going to object

1 to that. This is an improper means of refreshing the
2 witness's recollection. He's asking about specific
3 information that is contained within that paperwork.

4 The witness testified he did not recall
5 specifically what was in that paperwork and now he's
6 being asked basically to read from the paperwork what
7 exactly is on there.

8 MR. FALKNER: I'll ask him if he can refresh
9 his recollection first and then ask him questions if
10 that's --

11 THE COURT: I think, too, just asking him, do
12 you remember what she said before --

13 MR. FALKNER: Right.

14 THE COURT: -- and then you can simply look at
15 the exhibit, do you remember her telling you X. And if
16 he says no, I don't remember that, then you can impeach
17 him with the document.

18 But I don't even think he's testified totally
19 that his memory was -- he has no memory and it needs to
20 be refreshed, so I think that's a correct objection.
21 I'll let you go ahead and --

22 MR. FALKNER: That's fine.

23 THE COURT: -- correct that. So objection's
24 sustained.

25 MS. WEILAND: And I would just note that if he

1 is attempting to refresh recollection that the document
2 should be retrieved before asking additional questions.

3 THE COURT: I think that's correct.

4 MR. FALKNER: I have no problem with that.

5 THE COURT: All right.

6 CONCLUSION OF SIDEBAR

7 Q. You remember having a conversation with
8 Elizabeth Millett about her motivations for why she
9 would want to be a confidential informant, correct?

10 A. Yes.

11 Q. And is it fair to say that during that
12 conversation she gave you three generalized areas of --
13 of reasons why she may want to be a confidential
14 informant?

15 A. Yes.

16 Q. Is it fair to say that the first motivation
17 was of some concern for her family?

18 A. Yes.

19 Q. And then is it fair to say that the second
20 reason is that -- that she gave you is she's just
21 friendly with law enforcement and was eager to assist?

22 A. Yes.

23 Q. And is it also fair to say that the third
24 motivation which she identified was that her daughter
25 and her son-in-law, meaning Stephanie Irish and

1 Johnathon Irish, were draining her financially?

2 A. I don't think it's fair to say it in that
3 context, no, sir.

4 Q. Did she say that her daughter and her
5 son-in-law were draining her financially?

6 A. It's in the context of the totality of the
7 circumstances that she believed her daughter was in.

8 Q. Okay. I'm not sure that I understand your
9 question. My -- or answer.

10 My question is did she say that her daughter
11 and her son-in-law were draining her financially?

12 A. Yes.

13 MS. WEILAND: I'm going to object on hearsay
14 grounds, your Honor.

15 THE COURT: Overruled.

16 Go ahead.

17 Q. And she indicated to you that she had recently
18 purchased a home for her daughter and son-in-law,
19 correct?

20 A. Yes.

21 Q. And that she had also sold a substantial
22 property, correct?

23 A. I believe so.

24 Q. And that Stephanie Irish and Johnathon Irish
25 were constantly requesting money and access to an

1 inheritance, correct?

2 MS. WEILAND: Your Honor, may we approach?

3 THE COURT: Yes.

4 AT SIDEBAR

5 MS. WEILAND: Your Honor, I'm going to relodge
6 my hearsay objection. The -- Ms. Millett is expected to
7 testify. Right now Attorney Falkner is eliciting from
8 this witness information that -- what did Elizabeth
9 Millett say to you.

10 THE COURT: That's correct.

11 MR. FALKNER: But it's not being offered --

12 THE COURT: What's the purpose?

13 MR. FALKNER: It's not being offered for the
14 truth of the matter asserted. It's being offered for
15 the fact that this is the complaint that she made to law
16 enforcement and that helps establish her bias.

17 THE COURT: Well, you'll be able to ask her
18 that in terms of reasons that --

19 MR. FALKNER: I understand that.

20 THE COURT: -- she -- motives to perhaps
21 fabricate. You'll be able to ask her that. So I am
22 sustaining the objection.

23 MR. FALKNER: Your Honor, if I just may
24 briefly --

25 THE COURT: Yes, go ahead.

1 MR. FALKNER: The fact that she identified to
2 law enforcement these issues as a -- as reasons why she
3 was cooperating with them at that time goes to her bias
4 at that time as opposed to whatever she testifies as her
5 motives here today in this courtroom.

6 THE COURT: And she is going to testify and if
7 she denies any of that, you can call him again to
8 impeach her. I believe that's the proper way to do it.
9 So I do believe that it's a correct objection and it's
10 sustained.

11 MR. FALKNER: Okay.

12 CONCLUSION OF SIDEBAR

13 THE COURT: All right. Go ahead, Attorney
14 Falkner.

15 Q. After this January meeting where you signed up
16 Elizabeth Millett as a confidential informant, did you
17 meet with her again or was it Agent Tongbua, to your
18 knowledge?

19 A. I don't believe I did.

20 Q. Do you have knowledge as to when Agent Tongbua
21 met with her?

22 A. Not without reviewing the file.

23 Q. And so were you informed in the case from
24 January 24th up until October 25th of 2019?

25 A. I was assigned to the case, but early on in

1 2019, that's the time period when things were sort of
2 cold or stalled.

3 Q. So were you working on the case from the time
4 after you met with Elizabeth Millett up until the time
5 that Stephanie Irish left Johnathon Irish?

6 A. I guess depends what you call working on the
7 case.

8 Q. Well, you weren't interviewing witnesses
9 during that time period?

10 A. No, sir.

11 Q. And you weren't in the process of obtaining
12 evidence in some other way during that time period?

13 A. Not at that time, no.

14 Q. Now, October 25th comes and goes and at that
15 point you become involved in interviewing various
16 witnesses, correct?

17 A. Yes.

18 Q. Was Peter Duguay the first witness that you
19 interviewed?

20 A. I don't remember the exact order of who I saw
21 first.

22 Q. Well, do you remember on October 29th of 2019
23 meeting with Peter Duguay and David Marcotte?

24 A. Do I remember meeting with them. I believe he
25 was the first, then I believe I saw David afterwards.

1 I'd have to refresh.

2 Q. And then it was a couple weeks before your
3 next interview, correct?

4 A. I would -- I'm sorry, I need a name or
5 something to refresh which --

6 Q. Dylan Roosa was the next person you met with?

7 A. After Peter and David, yes.

8 Q. And that was November 14th, correct?

9 A. Yes.

10 Q. And you met -- it was after that you met with
11 Dylan Roosa -- I'm sorry.

12 Were you involved in the application for Dylan
13 Roosa to become a confidential informant?

14 A. Yes.

15 Q. And so you were also part of -- and did that
16 occur on November 14th?

17 A. If November 14th is the first time I
18 interviewed him, no, it did not.

19 Q. Well, he was next interviewed on December 5th.
20 Is that when you filed the application?

21 A. Again, I'd have to look at the paperwork.
22 What I remember is the initial interview when I first
23 interviewed him. After that interview was complete and
24 going back to the office, there was discussion how --
25 maybe reapproach him to ask if he could be or would be

1 willing to be an informant and what he could possibly do
2 to help us. I'd have to refresh -- look at all
3 paperwork to lock in dates.

4 Q. Let me ask you this. During the November 14th
5 interview with Dylan Roosa, was there any conversation
6 at all about his finances?

7 A. His finances?

8 Q. Correct.

9 A. Not that I can remember at the moment.

10 Q. And what about on the December 5th interview?

11 A. With?

12 Q. Dylan -- with Dylan Roosa.

13 A. About his finances?

14 Q. Correct.

15 A. I don't remember specifically. I know he
16 didn't have a license and owed money to get a license.

17 Q. Now, November 27th, the day before
18 Thanksgiving, that's when you and Agent Tongbua go to
19 visit Gary Roy, right?

20 A. It was the Wednesday before Thanksgiving?

21 Q. Right.

22 A. Yes, sir.

23 Q. What time of day was this visit?

24 A. Morning, early morning.

25 Q. When you say early morning, can you --

1 A. 7:00 a.m., 8:00 a.m.

2 Q. Okay. And was Mr. Roy a alerted that you'd be
3 coming to the house?

4 A. No, he was not.

5 Q. Did you and Agent Tongbua travel in the same
6 vehicle?

7 A. No.

8 Q. Did you travel in marked vehicles?

9 A. No.

10 Q. Did anybody else other than yourself or Agent
11 Tongbua go to this home?

12 A. That morning?

13 Q. Correct.

14 A. No.

15 Q. So you and Agent Tongbua walk up to the door
16 and knock and at that point, to the best of your
17 knowledge, Gary Roy a has no idea you're coming?

18 A. Correct.

19 Q. How were you dressed?

20 A. Regular street clothes, probably a collared
21 shirt and jeans is what I typically wear.

22 Q. Nothing to indicate that you're a member of
23 law enforcement?

24 A. I would have had credentials and a badge in my
25 hand.

1 Q. And what about Agent Tongbua?

2 A. I believe he would have had his credentials
3 out as well.

4 Q. Was he dressed similarly?

5 A. I believe so, yes.

6 Q. So you knock on the door. Who goes in first?

7 A. I'm sorry?

8 Q. Who goes into the home first?

9 A. I don't remember which order we walked in.

10 Q. Who else was home with Gary Roy a at this time?

11 A. His parents.

12 Q. Who answered the door?

13 A. I believe it was his father.

14 Q. Was his name Gerald Roy a as well?

15 A. Senior, I believe.

16 Q. And fair to say that Gary Roy a was embarrassed
17 to be receiving a visit from two FBI agents on the
18 morning before Thanksgiving?

19 A. I don't know if he was embarrassed or not,
20 sir.

21 Q. Did he say anything about being embarrassed?

22 A. I don't recall.

23 Q. Was he upset that he was being visited by two
24 FBI agents on the morning before Thanksgiving?

25 A. Just in general, from my experience when

1 people -- when law enforcement knocks on someone's door,
2 their first -- there's concern that, you know, their
3 first fear is is there some kind of death notification
4 of some sort if you're not expecting the police knocking
5 at your door.

6 So there's getting past that initial
7 introduction and then basically that -- other than --
8 you know, him wondering why we were there and then it
9 was explained.

10 Q. Did you suggest to him that he had some reason
11 to be concerned that you were looking for these firearms
12 at his house?

13 A. I did not, no.

14 Q. Did Agent Tongbua?

15 A. Suggest to him that he should be concerned?

16 Q. Correct.

17 A. No, sir.

18 Q. What was his demeanor like when you first came
19 into the home?

20 A. He was polite and cooperative with us.

21 Q. And I just want to go through the items in the
22 plastic crate.

23 There was a BB gun in there, right?

24 A. Yes.

25 Q. That's not in this courtroom. Was that seized

1 by you?

2 A. No.

3 Q. Was that given back to Mr. Roya?

4 A. Yes.

5 Q. So does that mean the BB gun and that suit
6 that was depicted in a -- in the photograph and those
7 other items that aren't in this courtroom, those were
8 items that were given back to Mr. Roya?

9 A. Yes. Well, they never left his possession,
10 never left that house.

11 Q. Well, were they in the box when you went
12 through the box?

13 A. Yes.

14 Q. So who took them out of the box, you or
15 Mr. Roya?

16 A. I don't remember exactly. I know he was there
17 as we inventoried what was in the box.

18 Q. Now, there were some blankets in that box,
19 right?

20 A. Yes.

21 Q. The firearms and the BB gun were wrapped in
22 those blankets, correct?

23 A. Yes.

24 Q. So when you first opened that box, was it just
25 full to the top and all you could see at the top were

1 blankets?

2 A. I'd have to go back to that -- one of the
3 pictures that was shown to me earlier. I believe you
4 could see firearms.

5 Q. Let me ask it a different way.

6 So the picture of the box that you looked at
7 earlier in front of the jury showed some firearms laying
8 on top of a blanket, correct?

9 A. Yes.

10 Q. And that was the rifle and the BB gun, right?

11 A. I believe so.

12 Q. When the box was opened, were they lying on
13 top like that or were they covered by a blanket?

14 A. I believe that's how they were when Mr. Royo
15 opened the box.

16 Q. Were those the only firearms that you could
17 see at that time?

18 A. I believe so, yes.

19 Q. Who went through the box? Did Mr. Royo go
20 through the box or did you go through the box?

21 A. I believe it was Special Agent Tongbua and I
22 with Mr. Royo there.

23 Q. Okay. And some of the pictures depict
24 Mr. Royo holding on to the firearms, right, in his
25 hands?

1 A. Yes.

2 Q. Did you then hand those firearms to him for
3 purposes of taking the pictures?

4 A. I believe he was just there next to us as we
5 were going through the box and helping us move stuff.
6 Like I said, he was cooperative and helpful.

7 Q. So you didn't have a security concern while
8 you were doing this inventory of the box?

9 A. No.

10 Q. And what about Gary Roy Sr.? Was he involved
11 in this at all?

12 A. Other than helping him carry down that box,
13 no.

14 Q. Between the time that you seized the firearms
15 and the time that Mr. Irish was arrested, you only
16 performed two more interviews, one of Mr. Roosa and a
17 second interview of Mr. Roy, correct?

18 A. I believe so, yes.

19 Q. And then it was on December 30th that you
20 actually arrested Johnathon Irish?

21 A. I believe it was December 20th.

22 Q. And it was after that that you performed any
23 and all of your interviews with Roscoe Whitney and Neil
24 Prive?

25 A. After the arrest, yes.

1 Q. Were you -- were you aware that there was some
2 kind of a recorded call with Roscoe Whitney on
3 November 10th of 2019?

4 A. Which date?

5 Q. November 10th.

6 A. If it's the call I'm thinking of, yes.

7 Q. Did you participate in that call?

8 A. I did not.

9 Q. You weren't present when it occurred?

10 A. No.

11 MR. FALKNER: May I have just one more moment,
12 your Honor?

13 THE COURT: Yes.

14 Q. Just a follow-up on the jail calls.

15 You said you listened to 60 to 70 hours' worth
16 of jail calls; is that right?

17 A. It's just an estimate. There was quite a bit.

18 Q. He was probably making a couple of different
19 phone calls every day, correct?

20 A. Yes.

21 Q. And some of those calls lasted up to hours,
22 correct?

23 A. What? I'm sorry.

24 Q. Some of those calls lasted upwards of an hour,
25 correct?

1 A. No, each call is limited to 20 minutes. The
2 visit calls are up to, I believe, 53-ish minutes, but if
3 he were to make a repeat phone call, then, yes, they
4 could extend it for a maximum of 20 minutes at a time to
5 when the call gets shut off.

6 Q. All right. And so would it be fair to say
7 that out of those 60 to 70 hours, at least 30 or more
8 hours of those phone calls involved his speaking to
9 Nancy Haskell, his mother?

10 A. Yes.

11 Q. And on that -- during the visit that was
12 recorded, was that the only visit that was recorded?

13 A. No, any visit he had would have been recorded.

14 Q. Did you listen to other calls recording
15 visits?

16 A. Yes.

17 Q. How many of those did you listen to?

18 A. Of the visits?

19 Q. Right.

20 A. I believe two, maybe three.

21 Q. All right. And were all of those close to an
22 hour long?

23 A. From memory, I believe so.

24 Q. And I just want to be clear. The recording
25 that is now the government's exhibit, that's a 30-second

1 clip, approximately, right, 20- to 30-second clip?

2 A. Yes.

3 MR. FALKNER: Your Honor, I have no further
4 questions.

5 THE COURT: All right. Thank you.

6 MS. WEILAND: May I have just a moment, your
7 Honor?

8 THE COURT: Yes.

9 MS. KRASINSKI: May we approach, your Honor?

10 THE COURT: Yes.

11 AT SIDEBAR

12 MS. KRASINSKI: I am slightly concerned with
13 the sort of last portion of the questioning, you've
14 listened to hundreds of hours of calls and all this is
15 is a 20-second clip.

16 We have disclosed transcripts of jail calls.
17 I've discussed portions of jail calls with counsel that
18 talk about the defendant talking about this case, about
19 these guns, about purposely saying things on jail calls
20 that are red herrings.

21 In fact, there is one call where the defendant
22 says, my attorneys told me to stop planting red herrings
23 in these calls. He specifically says in one call that
24 he says things for the purposes of misdirection. He
25 specifically talks to the federal government in some of

1 those calls.

2 I'm not going to repeat the cursing in this,
3 but in one particular call he says, now, stop, stop,
4 stop, to all you feds listening, suck an F-ing D word.

5 So I am concerned that this line of
6 questioning gives the jury the opinion that this is the
7 only time that he's talking about the case or anything
8 like that.

9 Now, we chose not to introduce that. We
10 thought it -- given his statements about misdirection
11 and red herrings, it was kind of confusing. But I'm not
12 sure the appropriate remedy for this now because the
13 jury should not be left with an impression that only 20
14 seconds of all of these calls were relevant.

15 So I don't know if -- I bring this up now
16 because I don't know that the -- I don't know that we
17 should get into the contents of all of those calls --

18 THE COURT: Right.

19 MS. KRASINSKI: -- but that is a concern I
20 have now.

21 THE COURT: All right. But you don't have any
22 suggested cure at this point?

23 MS. KRASINSKI: I mean, we can question him
24 about the content of the calls, about red herrings,
25 about speaking directly to us, about stating that he's

1 purposely saying things for misdirection.

2 MS. WEILAND: Reflecting an awareness that his
3 calls are being recorded and monitored.

4 THE COURT: At this point -- I understand what
5 you're saying and I don't think that at this point he's
6 opened the door to that. I think it's close and I
7 understand what you're saying, but at this point I'm
8 going to -- I'm not going to allow any further
9 questioning on that.

10 I think you could ask him one generic
11 question: Defense counsel asked there were hundreds of
12 hours of questions and there's only this one call that
13 you recorded; were there other relevant statements and
14 calls that you heard him say, something generic such as
15 that, and I think that would cure at this point the
16 limited impression that's been left with the jury. I'll
17 let you do that.

18 I'm sorry --

19 MS. WEILAND: That's okay.

20 MS. KRASINSKI: I've just been the one that's
21 listened to all of the jail calls, which is why --

22 THE COURT: All right. I'll let you do that.

23 MS. WEILAND: Okay.

24 THE COURT: And then we're going to take a
25 lunch break for one hour. Okay? All right.

1 CONCLUSION OF SIDEBAR

2 REDIRECT EXAMINATION3 BY MS. WEILAND:

4 Q. Just a few quick questions, Officer LeBlanc.

5 You mentioned that in signing up Mr. Roosa to
6 work as a confidential source, that did not take place
7 during your first interview of him; is that correct?

8 A. Correct.

9 Q. And, in fact, I believe you just stated on
10 cross that it was after that interview back at the
11 office that you and some of your colleagues discussed
12 the possibility of approaching him and seeing if he'd be
13 willing to work in that capacity; is that accurate?

14 A. Yes.

15 Q. So is it fair to say Mr. Roosa did not
16 approach you about working as a source?

17 A. Correct. We approached him.

18 Q. Is the same true of Mrs. Millett?

19 A. Yes.

20 Q. You approached her with the idea?

21 A. Yes.

22 Q. And then turning your attention to your
23 monitoring of the jail calls, I just want one point of
24 clarification.

25 I believe on cross-examination you were asked

1 whether you had reviewed 60 to 70 hours of jail calls.
2 Was it your testimony on direct that you listened to 60
3 to 70 hours' worth of calls or 60 to 70 calls, if you
4 remember?

5 A. I don't remember the exact hours. Like I
6 said, I would estimate at least 60, 70, 80 calls with
7 each one ranging anywhere from three to four minutes
8 long to 20 minutes long with probably many of them being
9 in the 11- to 19-minute range.

10 Q. Okay. And in those calls, you said maybe half
11 of them or so were with the defendant's mother,
12 Ms. Haskell; is that correct?

13 A. The calls that I listened to, the majority of
14 calls were between him, his mother, and Don Lane.

15 Q. And I just want to be clear. The 30-second
16 clip that's been admitted as Government's Exhibit 37,
17 in all your hours of monitoring jail calls, is that
18 30-second clip the sum total of relevant discussions
19 that Mr. Irish had with other people related to
20 information about this case?

21 A. Say that again.

22 Q. Was that 30-second clip the only time that you
23 heard recorded jail calls that appear to be discussing
24 information pertinent to this case?

25 A. It's not the only time, no.

1 MS. WEILAND: No further questions, your
2 Honor.

3 THE COURT: Anything further?

4 MR. FALKNER: Nothing, your Honor.

5 THE COURT: All right. It is time for our
6 lunch break.

7 At any point if a juror needs to take a break,
8 just signal and if I can't see you, somebody will see
9 you and let me know.

10 We're going to take a lunch break, an hour.
11 And remember all my instructions. I'm not going to
12 repeat them again. But most importantly, do not discuss
13 the case with each other, but keep all my other
14 instructions in mind as well and I'll see you after the
15 lunch break.

16 THE CLERK: All rise for the jury.

17 (Jury excused.)

18 THE COURT: Officer LeBlanc you may step down,
19 sir. Thank you.

20 (Witness excused.)

21 THE COURT: Anybody need to talk to me before
22 you take your lunch break?

23 MS. WEILAND: No, your Honor.

24 THE COURT: All right. Good. See you in an
25 hour.

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(Lunch recess taken at 12:23 p.m.)

C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best of
my knowledge, skill, ability and belief.

Submitted: 3/27/2020

/s/ Liza W. Dubois
LIZA W. DUBOIS, RMR, CRR